

Bosnia and Herzegovina



The Court of Bosnia and Herzegovina

Case number: S1 1 K 00 3302 10 Krl

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Before the Trial Panel: Judge Davorin Jukić, presiding
Judge Jasmina Kosović, panel member
Judge Darko Samardžić, panel member

THE PROSECUTOR'S OFFICE OF BOSNIA AND HERZEGOVINA
Versus the Accused
Zurahid Mujčinović and Sulejman Hrustić

VERDICT

Prosecutor of the Prosecutor's Office of Bosnia and Herzegovina: Adnan Gulamović

The Accused Zurahid Mujčinović, Attorney Midhat Skenderović

The Accused Sulejman Hrustić, Attorney Nedžla Šehić

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IN THE NAME OF BOSNIA AND HERZEGOVINA

The Court of Bosnia and Herzegovina, sitting on the Panel composed of Judge Davorin Jukić, as the President, and Judge Jasmina Kosović and Judge Darko Samardžić, as members, with the participation of Legal Advisor-Assistant Tanja Curović, as the record-taker, in the criminal case conducted against the Accused Zurahid Mujčinović and Sulejman Hrustić, for the criminal offense of War Crimes against Civilians, in violation of Article 173(1)(c) of the Criminal Code of Bosnia and Herzegovina (CC of BiH), as read with Articles 29 and 180(1) of the CC of BiH, based on the Indictment filed by the Prosecutor's Office of Bosnia and Herzegovina No. T20 0 KTRZ 0000006 08M of 14 April 2011, amended on 10 July 2012, following the public main trial, in the presence of the Accused Zurahid Mujčinović and Sulejman Hrustić and their Defense Counsel, Attorneys Midhat Skenderović and Nedžla Šehić, on 2 October 2012 rendered and publicly announced the following:

VERDICT

The Accused:

ZURAHID MUJČINOVIĆ a.k.a. "Zoka", son of Mustafa and Đulsa, nee Tursunović, born on 4 October 1953 in Donji Srebrenik, Municipality of Srebrenik, residing in ..., citizen's identification number: ..., ethnicity ..., citizen of ..., driver by profession, literate, graduated from the Traffic-Technical School, married, father of two, did not serve in the military, indigent, no previous convictions, represented by Midhat Skenderović, Attorney from Gradačac,

HAS BEEN FOUND GUILTY

Of the following,

During the armed conflict in Bosnia and Herzegovina, in the period from late July to mid August 1992 in the settlement of Rapatnica, Municipality of Srebrenik, the accused Mujčinović Zurahid, as a member of the so-called Hunting Company which was later renamed into the 21st Mountain Brigade Srebrenik within the Military Unit 5155 of the Army of RBiH, acted in violation of Article 3 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 by inhumane treatment of Serb civilians, who were unlawfully incarcerated in the Youth Centre building, whereby he

I) Together with several unidentified soldiers, he was repeatedly beating the prisoner Pero Đukić, punching and kicking him and using a baton to beat him over his back, arms and legs, while at the same time they insulted him on an ethnic basis, and inserted a needle and syringe under his nails, and the Accused Mujčinović was burning his back with a soldering iron as a result of which he has the scars even nowadays, was giving him electroshocks through a cable attached to his ears, which caused him to lose consciousness, and on one occasion the Accused poured salt over his wounds and removed bandages from them saying that “the Chetnick would certainly survive even without the bandages”, thus inflicting serious suffering on him;

II) On an unknown date, together with other unidentified soldiers, he cursed and insulted the prisoner Drago Đukić and, together with other soldiers he was punching and kicking him all over his body, inserted a needle and syringe under his nails, and the Accused Mujčinović was burning his back with a soldering iron, poured salt over his wounds, and forced him to eat a cup of salt depriving him of water, thus causing him to suffer severely.

Therefore,

acting in violation of international humanitarian law during the war in Bosnia and Herzegovina and during the armed conflict between the Army of RBiH and the Army of RS in the territory of the Municipality of Srebrenik, he treated civilians in an inhumane manner;

Whereby,

under paragraphs I and II, Zurahid Mujčinović committed the criminal offense of War Crimes against Civilians in violation of Article 173(1)(c) of the CC of BiH, in conjunction with Articles 29 and 180(1) CC of BiH.

Therefore, pursuant to Article 285(1) of the CPC of BiH, and in application of Articles 39, 42, 48, 49 and 50(1)(a) of the CC of BiH, the Court

S E N T E N C E S

HIM TO LONG-TERM IMPRISONMENT OF 8 (EIGHT) YEARS

Pursuant to Article 188(4) of the CPC of BiH, the Accused is relieved of the duty to reimburse the costs of the criminal proceedings and they will be paid from within the Court budgetary appropriations.

Pursuant to Article 198(2) of the CPC of BiH, the aggrieved parties Pero Đukić and Drago Đukić are referred to pursue their claims under property law in a civil action.

Pursuant to Article 284(c) of the CPC of BiH

The Accused:

SULEJMAN HRUSTIĆ a.k.a. “Suljo“, son of Ragib and Zumra, nee Taletović, born on 25 December 1945 in Donja Obodnica, residing in Donja Tinja No. 24, the Municipality of Srebrenik, citizen's identification number: 2512945183304, Muslim-Bosniak, citizen of BiH, pensioner, literate, finished primary school, married, father of three, served in the former JNA in Kičevo and Prilep – Macedonia, registered in the Military Records of Srebrenik, indigent, with previous criminal convictions, represented by his Defense Counsel Nedžla Šehić, Attorney from Sarajevo, currently at large,

HAS BEEN ACQUITTED OF CHARGES

That he,

During the armed conflict in Bosnia and Herzegovina, in the period from late July to mid August 1992 in the settlement of Rapatnica, Municipality of Srebrenik, Sulejman Hrustić, initially as a member of the 21st Mountain Brigade Srebrenik, that is, the Military Unit 5155 of the Army of RBiH, acted in violation of Article 3 of the Geneva Convention relative to the Protection of Civilian Persons in Time of War of 12 August 1949 by inhumane treatment of Serb civilians, who were unlawfully incarcerated in the Youth Centre building, whereby he together with other persons, repeatedly cursed and insulted the prisoner Drago Đukić, punched and kicked him and beat him with a rubber baton all over his body.

Whereby,

Hrustić Sulejman would have committed the criminal offense of War Crimes against Civilians in violation of Article 173(1)(c) of the CC of BiH, in conjunction with Articles 29 and 180(1) of the CC of BiH.

Pursuant to Article 189(1), the Accused Sulejman Hrustić is relieved of the duty to reimburse the costs of the criminal proceedings and they will be paid from within the Court budgetary appropriations.

Pursuant to Article 198(3), the aggrieved party Drago Đukić is referred to pursue his claim under property law in a civil action.

I. REASONING

By the Indictment of the Prosecutor's Office of BiH number T20 0 KTRZ 0000006 08 of 14 April 2011, confirmed on 17 May 2011, the Accused Zurahid Mujčinović, by his actions described under counts I1 and II1, and the Accused Sulejman Hrustić, by his actions described under count II1 of the Indictment, were charged with having committed the criminal offense of War Crimes against Civilians in violation of Article 173(1)(c) of the CC of BiH, in conjunction with Article 29 and 180(1) of the CC of BiH. During the main trial, on 10 July 2012 the Prosecution submitted the Indictment factually amended relative to the actions by the Accused Sulejman Hrustić under Count II1 of the Indictment of 14 April 2011.

The amended Indictment charged the Accused with having acted in violation of Common Article 3 of the Geneva Convention of 12 August 1949 by treating inhumanely the Serb civilians who were unlawfully incarcerated in the Youth Centre building, in the settlement of Rapatnica, the Municipality of Srebrenik, specifically that Zurahid Mujčinović acted against Pero Đukić and Drago Đukić, and Sulejman Hrustić against Drago Đukić, in a manner as thoroughly described in the Counts of the amended Indictment.

1. As stated above, the Preliminary Hearing Judge confirmed the Indictment on 17 May 2011 and, on 27 June 2011, the Accused pleaded not guilty to the charges against them.
2. The main trial commenced on 5 October 2011.

A. PRESENTED EVIDENCE

1. PROSECUTION

3. During the evidentiary procedure, the Prosecution presented evidence by examining the following witnesses: Nijaz Bajraktarević, Ekrem Ibračević, Stokan Marković, Jovo Đukić, Blažan Todić, Pero Đukić and Drago Đukić.
4. The list of documentary evidence the Prosecutor presented and tendered into the case file is provided in Annex 1 to the Verdict and it constitutes its integral part.

2. DEFENSE

I Defense for the First-accused

5. During the evidentiary procedure, the defense for the First-Accused Zurahid Mujčinović presented evidence by examining the following witnesses: Safer Ahmetović, Ekrem Duranović, Elvedin Čudić, Dževad Imširović, Enis Softić, Ismet Imširović, Samir Begunić, Ilija Lamešić,

Suad Imširović, Džemal Buljubašić, Mensur Fazlić, Nihad Fazlić, Nihad Ibrišimović, Ševalija Smajlović, Mujo Rešidović, Hajrudin Abdulahović and Mevludin Abduhahović.

6. Also, the defense presented evidence by way of confrontation of witnesses Drago Đukić and Suad Imširović.

7. A list of documentary evidence the defense presented and tendered into the case file is provided in Annex 1a), constituting its integral part.

II Defense for the Second-accused

8. During the evidentiary procedure, the defense for the Second-Accused Sulejman Hrustić presented evidence by examining the witnesses Ismet Imširović and Suad Imširović.

9. A list of documentary evidence the defense presented and tendered into the case file is provided in Annex 1b) constituting its integral part.

II. CLOSING ARGUMENTS

(i) Prosecution's closing argument

10. At the beginning of its closing argument, the Prosecution referred to the legal qualification of the criminal offense the Accused have been charged with. When it comes to the first requirement, that is, that the Accused's actions must be committed during an armed conflict, the Prosecutor's Office notes that this requirement has been satisfied, considering that in this specific case a state of war and armed conflict were declared. Namely, on 20 June 1992, the Presidency of RBiH rendered a Decision on the proclamation of the state of war, while the civilians were ill-treated during the period from late July to mid August 1992. The conflicts in the territory of the Municipality of Srebrenik commenced in June 1992, while the Decision on the Proclamation of the Imminent War Threat was rendered on 8 April 1992.

11. With regard to the existence of a nexus between the perpetrators' actions and the war, the Prosecution notes that the Accused were soldiers – members of the Army of BiH. The ill-treated prisoners were civilians, and the ill-treatment was aimed at the persecution of Serb civilians from the Srebrenik municipality area. Considering that the perpetrators are supposed to act in a manner to violate the rules of international law in time of war, armed conflict or occupation, the Prosecutor's Office notes that this specific case concerns torture and injuries inflicted to the civilians' bodily integrity in time of war and armed conflict.

12. With regard to the charges, the Prosecution finds it to be an indisputable fact that there was a prison in the settlement of Rapatnica and that over various periods of time in the summer

1992, civilians of Serb ethnicity, including the aggrieved parties Pero Đukić and Drago Đukić, were detained there. The prison conditions concerning the food, hygiene and accommodation were very bad, which the Prosecution corroborated with the statements of witnesses Ekrem Ibračević and Ismet Imširović. The Prosecutor's Office notes that Pero and Drago Đukić, Stokan Marković, Blažan Todić, Jovo Đukić, Ekrem Ibračević, Suad Imširović and Enis Softić testified about the ill-treatment and torture in the prison.

13. Furthermore, in its closing argument, the Prosecutor's Office refers to membership of the Accused in the armed forces. With that regard, the Prosecutor's Office notes that the Accused were members of the 21st Mountain Brigade Srebrenik, and at the same time of the Military Unit 5155 of the Army of RBiH. Stating that the defense for the Second-Accused uses as evidence a Certificate obtained from the official records of the Federation Ministry for Issues of the Veterans and Disabled Veterans of the Defensive-Liberation War of 20 July 2010 and the Certificate of the Federation Ministry for the Issues of Veterans confirming that the Accused Sulejman Hrustić was a member of the Army of BiH from 15 May 1992 to 21 June 1992, the Prosecutor's Office notes that it is an indisputable circumstance that the Accused Sulejman Hrustić was a member of the Army of BiH from 15 May 1992 to 21 June 1992. Considering that the defense for the First-Accused uses as evidence the Certificate of the Federation Ministry for the Issues of Veterans by which it confirms that Zurahid Mujčinović was a member of the Army of RBiH from 5 April 1992 to 22 September 1992, the Prosecutor's Office also states that it is indisputable that the Accused Mujčinović was a member of the Army of BiH during the foregoing period of time. As for the name of the formation, the Prosecutor's Office finds it irrelevant that the unit's name was "Hunting Company", considering that this name has not been mentioned in the official document at all, and it only deems to be relevant that they were members of the armed forces, while the fact that the Accused Sulejman Hrustić left the unit earlier is not an element that would release the Accused from responsibility, because a perpetrator may be any person, that is, a civilian as well – who undoubtedly puts himself at the service of one of the warring factions.

14. The Prosecutor's Office notes that witness Pero Đukić stated that Zurahid Mujčinović was responsible for his torture in the prison. Thus, the Prosecutor refers to his statement indicating that a person who ill-treated him was of his height, that his speech was weird, that he heard he was a drum player, and the witness self-initiatively pointed at the Accused Zurahid Mujčinović in the courtroom indicating that he was the person who ill-treated him. In support of his claim, the Prosecution refers to the statement of witness Stokan Marković who stated that Pero had told him that "Zoka the drum-player" was burning him using a soldering iron. It is noted in the closing arguments that witnesses Mensur Fazlić, Ševalija Smajlović and Hajrudin Avdulahović stated that the Accused was uniformed and had an automatic rifle. Most of the defense witnesses confirmed that the Accused Zurahid Mujčinović was nicknamed "Zoran", and that he used to play drums.

15. Furthermore, witness Drago Đukić also accused Zurahid Mujčinović and Sulejman Hrustić of ill-treating him. Namely, both of them were present during the ill-treatment. Sulejman Hrustić

participated in insults and beating-up, while Zurahid Mujčinović, apart from that, burned him with a soldering iron and forced him to eat salt. The Prosecutor's Office notes that the confrontation with the defense witness Suad Imširović did not offer anything important to either defense or prosecution.

16. The Prosecutor's Office then referred to the testimony of the defense witnesses and noted that some of them neither mentioned nor recognized the Accused Sulejman Hrustić at all. The Prosecutor's Office notes that, based on the testimony of witnesses Ekrem Ibračević and Ilija Lamešić, a conclusion may be rendered that members of the military and civil police and other persons, such as those accompanying them, could also enter the prison premises.

(ii) Closing argument of the Defense for the Accused Zurahid Mujčinović

17. In its closing argument, the defense for the First-Accused Zurahid Mujčinović refers to the Prosecution's contradictory and unlawful evidence, arguing that the main and disputable matter is who the perpetrator of the referenced criminal offense was. The defense points at the testimony of witnesses for the Prosecution, stating that five of the seven witnesses did not confirm that the Accused Zurahid Mujčinović had participated in the crimes as charged. Thus, the defense notes that witness Stokan Marković testified that he had not seen Zurahid Mujčinović coming to Rapatnica, witness Blažen Todić does not know who performed torture and ill-treatment, witness Jovo Đukić has never heard about Zurahid Mujčinović before, and witness Nijaz Bajraktarević testified that he had never seen Mujčinović, that Zurahid Mujčinović was not among the members of the Military Police that secured the prison, and that police officer Huso a.k.a. Bobi inflicted injuries on Lazar Stanišić.

18. With regard to identification by the aggrieved party Drago Đukić, the defense submits that it was unlawful and offers its own reasons.

19. Furthermore, a part of the closing argument refers to the content of documentary evidence for the defense for the First-Accused – a letter of the Ministry of Defense of BiH confirming that Zurahid Mujčinović was recorded as a member of the Army of BiH from 5 April 1992 to 22 September 1992, and that he was not recorded either as a member of the Military Police Company or a Hunting- Reconnoiter Platoon. The company was formed on 4 April 1992 and disbanded on 22 September 1992. The Accused Zurahid Mujčinović was demobilized on that date, as proved by the Certificate issued by the Ministry of Justice and the military booklet. The defense states that all members of the "Hunting Company" who were examined as witnesses for the defense confirmed that the Accused Zurahid Mujčinović was a member of the Company until its disbandment. That was a paramilitary unit and was not entered into the official military records. Ismet Imširović, warden of the military prison, Sefer Ahmetović, Company Commander, Elvedin Ćudić, Company Deputy Commander, and all military police officers also confirmed that Zurahid Mujčinović had never been around the Rapatnica prison.

20. The defense also refers to the testimony of the defense witness Nihad Ibrišimović according to whom the Accused Mujčinović had a speech impediment before the war, in relation to which the Defense Counsel stated that his client sustained a stroke after the war and suffers from sensomotoric aphasia as a consequence.

21. **The Accused Zurahid Mujčinović** noted in his closing argument that he was not the perpetrator of the offenses he has been charged with, and that he supports the closing argument of his Defense Counsel.

(iii) Closing argument of the Defense for the Accused Sulejman Hrustić

22. In its closing argument, the defense for the Second-Accused Sulejman Hrustić denies the credibility, convincibility and admissibility of the Prosecution evidence. With regard to the legal qualification of the criminal offense, the Defense notes that one cannot consider just any unlawful action and violation of international law in time of war to be a war crime, but only the forms and manners of such actions that are prescribed by law. In this respect, the defense submits that the Prosecutor's Office failed to prove the kind and extent of suffering and pain, bodily and mental pains and injuries to bodily integrity and health that were sustained by the aggrieved party Drago Đukić while the Accused Sulejman Hrustić allegedly cursed, insulted, punched and kicked him and beat him with a rubber baton all over his body. Therefore the defense primarily notes that the actions the Accused has been charged with do not satisfy the elements of the criminal offense of War Crimes in violation of Article 173 of the CC of BiH.

23. Furthermore, the defense submits that the Prosecutor's Office did not prove the existence of any other, general elements of the criminal offense. It is therefore noted that the Accused has never denied the existence of a concentration camp in Rapatnica during the war and that civilians were detained there, and that there was no need at all to prove the existence of the state of war and the violations of international law in time of war because they were not disputable at all. However, the defense finds it disputable and unproved that the Accused Sulejman Hrustić was engaged in the military and present in the referenced prison in any capacity whatsoever, and that he participated in the ill-treatment of civilians. It notes though that Sulejman Hrustić was a member of the Army of BiH, within which he was engaged in the TD by driving his vehicle, from which it clearly follows that he had never had an active military engagement in the Army of BiH, and that he had never been a member of any military formation. The defense denies the accuracy of the Prosecutor's allegations that the Accused Sulejman Hrustić was a member of the Army of RBiH from 15 May 1992 to 21 June 1992, because that unit did not exist at that time at all.

24. In regard to *actus reus* and individual criminal responsibility of the Accused Sulejman Hrustić, the defense notes that the Prosecutor's Office failed to prove them and offer any relevant evidence thereof. In this respect, the defense argued that the examined witnesses Ekrem Ibračević, Ilija Lamešić and Ismet Imširević had stated that only members of the military

and civil police and those accompanying them could enter the prison premises. In his capacity as a military security organ, Ekrem Ibračević held the sole authority and competence over the prison/camp detainees and, during examination, he denied any possibility that other persons were allowed to enter the prison, stating that the Accused Sulejman Hrustić had not been a member of the military police, nor had he had access to detainees, and that he had never heard of or seen the Accused. Ekrem Ibračević, the person in charge and responsible for the prison, also testified that there was no possibility that Hrustić had access to detainees in Rapatnica. The Defense further stated that none of the Prosecution witnesses had seen the Accused in Rapatnica. Witnesses Blažen Todić, Jovo Đukić, Pero Đukić, Stokan Marković and Ilija Lamešić testified that Sulejman Hrustić was not the perpetrator of the criminal offense.

25. As regards the testimony of witness Drago Đukić, the defense analyzed it and concluded that it was not credible, that it was unreliable, incomplete and contradictory. Namely, the witness did not claim with certainty how he had found out about Hrustić's identity. Thus, the witness initially stated that he had heard about him from other detainees, including Stokan Marković and Lazar Stanišić. The defense submits that the witness stated rather generally that he was tortured and ill-treated by Hrustić, without going into detail as to what the Accused did to him. The defense considers the testimony of witness Đukić even more unreliable because his brother Pero Đukić did not know at all whether Sulejman Hrustić had ill-treated the prisoner. Furthermore, witness Drago Đukić stated that he was ill-treated by Suljo Hrustić a.k.a. Abur, member of the Muslim Military Police and that he wore a camouflage uniform with a white belt, which the defense finds to be false. Finally, the defense contests the legality of the identification done by witness Drago Đukić.

26. **The Accused Sulejman Hrustić** supported the closing argument of his Defense Counsel.

III. PROCEDURAL DECISIONS

(i) A decision on expired 30 (thirty)-day deadline

27. More than 30 days elapsed between the hearings held on 11 July 2011 and 22 August 2011.

28. Article 250(2) of the CPC of BiH stipulates the following:

“The main trial that has been adjourned must recommence from the beginning if the composition of the Panel has changed or if the adjournment lasted longer than 30 days. However, with the consent of the parties and the defense attorney, the Panel may decide that in such a case the witnesses and experts not be examined again and that no new crime scene investigation be conducted, but that the minutes of the crime scene

investigation and the testimony of the witnesses and experts given at the prior main trial be used instead.”

29. Considering that the parties and the Defense Counsel for the Accused were informed by the Panel that the adjournment between the last held hearing (held on **11 July 2011**) and the next scheduled hearing (**22 August 2011**) would be longer than 30 days, and the parties and the Defense Counsel consented to that without any objections, the Panel acted within the meaning of the legal provision quoted above in the further course of the proceedings.

30. Throughout the main trial, the Panel scheduled the trials within the legally set deadlines, being mindful of the rights of the Accused to trial within a reasonable time.

IV. STANDARDS OF EVALUATION AND GENERAL EVALUATION OF EVIDENCE

31. In the present case, the Court evaluated evidence in compliance with the provisions of the CPC of BiH, primarily applying the presumption of innocence as referred to in Article 3 of the CPC of BiH. This is a general principle of law according to which the burden of proof is placed on the prosecution, which has to prove its case beyond a reasonable doubt.

32. Article 15 of the CPC of BiH foresees the principle of free evaluation of evidence as one of the fundamental principles. According to this Article, the evaluation of the existence or non-existence of facts “shall not be related or limited to special formal evidentiary rules”. Therefore, the value of evidence is not predetermined, either qualitatively or quantitatively. The Court is obliged to evaluate every piece of evidence individually and in correlation with other evidence and, depending on the outcome of the evaluation, render a conclusion on whether a fact has been proven or not. The evidence evaluation consists of its logical and psychological parts. However, the free evaluation of evidence is limited by the principle of legality.

33. Article 10 of the CPC of BiH (Unlawful Evidence) stipulates the following:

“The Court shall not base its decision on evidence obtained through violation of human rights and freedoms prescribed by the Constitution and international treaties ratified by Bosnia and Herzegovina, or on evidence obtained through essential violation of this Code.”

34. The Panel must be convinced that evidence was given voluntarily and that it is truthful and credible. In the present case, the Panel was mindful of every witness statement and reviewed every document so as to decide on their credibility and probative value.

35. Thus, all presented pieces of evidence have been evaluated. However, in the Verdict, the Panel only referred to those pieces of evidence that are considered to be most relevant, reasoned them and only presented its conclusions on the facts essential for the decision.

36. There exists no legal obligation to have all individual pieces of evidence presented in the Verdict. In this regard, it is not necessary to refer to every witness testimony or every piece of evidence in the case record. It is a legal obligation to evaluate all presented evidence when rendering a decision, which the Court did.

37. This position has also been confirmed and reasoned in detail in the case law of the ICTY Appeals Chamber:

*The Appeals Chamber recalls that every accused has the right to a reasoned opinion under Article 23 of the Statute and Rule 98ter(C) of the Rules. However, this requirement relates to the Trial Chamber's Judgment; **the Trial Chamber is not under the obligation to justify its findings in relation to every submission made during the trial.**¹*

38. The same position is presented by the ICTY Appeals Chamber in *Mucić and others*:

„The Trial Chamber is not obliged in its Judgement to recount and justify its findings in relation to every submission made during trial.“²

39. The Panel reconsidered all pieces of subjective and objective evidence presented at the main trial and, having evaluated them carefully, in isolation and in connection with each other, as stipulated in Article 281(2) of the CPC of BiH, it found that the Accused Zurahid Mujčinović had committed the criminal offense of War Crimes against Civilians in violation of Article 173(1)(c) of the CC of BiH; however, the Panel could not find beyond a reasonable doubt that the Accused Sulejman Hrustić had committed the same criminal offense and, applying the principle of *in dubio pro reo*, it acquitted him of charges.

V. APPLICABLE LAW

40. At the time of the perpetration of the criminal offense, the Criminal Code of the Socialist Federative Republic of Yugoslavia (CC of SFRY)³ was in force. After BiH declared independence, based on the Decree Law of 22 May 1992, the CC of SFRY was adopted to be the Code of Bosnia and Herzegovina (with minor amendments), effective as of the date of its publication. The CC of SFRY was in force on the territory of the Federation of BiH until 20 November 1998 and on the territory of Republika Srpska until 31 July 2000 and in the Brčko District until 2001.

41. Article 142 of the CC of SFRY foresees war crimes against civilians as a criminal offense. This offense carried the punishment of imprisonment for a term of not less than 5 years or the death penalty. The CC of BiH foresees War Crimes against Civilians in Article 173 and

¹ *Kvočka and others*, Judgement of the Appeals Chamber in the ICTY case, paragraphs 23-25.

² *Mucić and others*, Judgement of the Appeals Chamber in the ICTY case 20, para. 498.

³ The SFRY Assembly adopted the Criminal Code of Bosnia and Herzegovina at the session of the Federal Council held on 28 September 1976, and published it in the Official Gazette of SFRY No. 44 of 8 October 1976.

stipulates the punishment of imprisonment for a term not less than ten years or a long-term imprisonment.

42. Therefore, a comparison of these legal provisions clearly indicates that war crimes against civilians were regulated by both the CC of SFRY and the CC of BiH, however, the punishment under the CC of BiH is more lenient as it does not provide for the death penalty.

43. Considering the time of the perpetration of the referenced criminal offense (1992) and the substantive law that was in force at that time, the Panel submits that it is important to take into account the principle of legality (for both: *nullum crimen sine lege and nulla poena sine lege*) and the principle of time constraints regarding applicability of the criminal code.

44. Article 3 of the Criminal Code of BiH stipulates the principle of legality under which no punishment or other criminal sanction may be imposed on any person for an act which, prior to being perpetrated, has not been defined as a criminal offence by law or international law, and for which a punishment has not been prescribed by law.

45. Also, the principle of legality is also prescribed by Article 7(1) of the European Convention on Human Rights and Fundamental Freedoms (hereinafter: the ECHR) which has precedence over all other laws in BiH.⁴ The said Article of the ECHR reads as follows: *“No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed.”*

46. Article 15(1) of the International Covenant on Civil and Political Rights (hereinafter: the ICCPR) foresees the following: *“No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence, under national or international law, at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time when the criminal offence was committed. If, subsequent to the commission of the offence, provision is made by law for the imposition of the lighter penalty, the offender shall benefit thereby.”*

47. Thus, it is prohibited to punish the acts and omissions which were not criminal at the time of perpetration, and it is also prohibited to impose a heavier penalty than the one that was applicable at the time of the perpetration of the criminal offense.

48. According to Article 4 of the CC of BiH (Time Constraints Regarding Applicability) stipulates that the law that was in effect at the time when the criminal offence was perpetrated shall apply to the perpetrator of the criminal offence and, if the law has been amended on one or more occasions after the criminal offence was perpetrated, the law that is more lenient to the perpetrator shall apply.

⁴ Article 2.2. of the Constitution of BiH.

49. However, an exemption from the principle of legality is contained in Article 4a) of the CC of BiH which adopted the provisions of Article 7(2) of the ECHR and Article 15(2) of the ICCPR, thus explicitly enabling an exceptional deviation from both the principle under Article 4 of the CC of BiH and the obligation to apply the more lenient law in the acts that constitute criminal offenses under international law, with regard to incriminations that include the violation of the rules of international law. This position has been taken in the hitherto case law of the Court of BiH, and it complies with the international case law.⁵

50. As stated above, at the relevant time the criminal offense of War Crimes against Civilians was stipulated in Article 142 of the CC of SFRY, which was in force in BiH at that time. Article 173 of the CC of BiH also foresees War Crimes against Civilians, therefore, the criminal offense of War Crimes against Civilians was clearly regulated by law. Therefore, the principle of *nullum crimen sine lege* was satisfied.

51. Pursuant to Article 7(1) of the ECHR and Article 4 of the CC of BiH, the law that was in effect at the time when the criminal offence was perpetrated shall apply to the perpetrator of the criminal offence if it is more lenient to the perpetrator. In practice, the European Court finds that Article 7 is violated if a convicted person, by retroactive application of the new law which directly or indirectly (for example, the provisions on recidivism) affects the sentencing, received a heavier punishment than the one that the person had faced at the time of the perpetration of the criminal offense.⁶

52. The abolishment of the death penalty in BiH⁷ raised some new issues in this regard, where the death penalty (Article 142 of the CC of SFRY) has been substituted with long-term imprisonment in the national legislation (Article 173 of the CC of BiH). The European Court understands the rule and the exception of the principle of legality as being equally recognized and as constituting part of the same principle. The European Court considered this issue in at least two cases.⁸

53. According to the jurisprudence of the European Court, no reference can be made to the violation of Article 7 of the Convention where the appellant received the life imprisonment sentence, that is, a long-term imprisonment for the criminal offense for which the death penalty was stipulated at the time of the perpetration, although the life sentence and a long-term imprisonment were not foreseen by law which was in force at that time, because the life imprisonment sentence is evidently more lenient than the death penalty.

⁵ See a Decision of the Constitutional Court of BiH on Admissibility and Merits in the case of Abduladhim Maktouf No. AP1785/06 of 30 March 2007 and the Decision on Admissibility issued by the ECtHR in the *Karmo versus Bulgaria* of 9 February 2006.

⁶ See, for example, ECtHR, *Jamil versus France*, Judgement of 8 June 1995; ECtHR, *Achour versus France*, Judgment of 10 November 2004; ECtHR, *Achour versus France*, Grand Chamber, Judgement of 29 March 2006.

⁷ In accordance with Protocols Nos 6 and 13 to the European Convention.

⁸ The case *Karmo versus Bulgaria*, Decision on Admissibility of 9 February 2006. Also, see *Ivanov versus Bulgaria*, Decision on Admissibility of 5 January 2006.

54. Therefore, as stated above, the application of Article 173(1)(c) of the CC of BiH does not constitute the violation of the *nulla poena sine lege*, nor does it constitute the violation of the Accused's right to a more lenient punishment. Quite the opposite, it means the application of a law more lenient to the perpetrator, which is fully consistent with the law and international law, that is, general principles of international law.

VI. ALLEGATIONS IN THE INDICTMENT

55. The amended Indictment of the Prosecutor's Office of BiH of 10 July 2012 charged Zurahid Mujčinović and Sulejman Hrustić with the following: during the armed conflict and war in Bosnia and Herzegovina, in the period from late July to mid August 1992, the accused Zurahid Mujčinović, as a member of the 21st Mountain Brigade Srebrenik, that is, the Military Unit 5155 of the Army of RBiH, and Sulejman Hrustić, as a member of the same unit and then in an unknown capacity, acted in violation of Common Article 3 of the Geneva Convention Relative to the Protection of Civilians in Time of War of 12 August 1949 by treating inhumanely the Serb civilians who were unlawfully incarcerated in the Youth Centre building, in the settlement of Rapatnica, the Municipality of Srebrenik, whereby Zurahid Mujčinović, by his actions thoroughly described under counts I1 and II1, and the Accused Sulejman Hrustić, by his actions thoroughly described under count II1 of the Indictment, committed the criminal offense of War Crimes against Civilians in violation of Article 173(1)(c) of the CC of BiH, in conjunction with Article 29 and 180(1) of the Criminal Code of Bosnia and Herzegovina.

A. THE CRIMINAL OFFENSE OF CRIMES AGAINST CIVILIANS IN VIOLATION OF ARTICLE 173 OF THE CC OF BIH

56. Pursuant to Article 173 of the CC of BiH, the criminal offense of Crimes against Civilians is committed by whoever "who, in violation of rules of international law in time of war, armed conflict or occupation, orders or perpetrates any of the following acts: a)..., b), and c) which includes killings, intentional infliction of severe physical or mental pain or suffering upon a person (torture), inhuman treatment, biological, medical or other scientific experiments, taking of tissue or organs for the purpose of transplantation, immense suffering or violation of bodily integrity or health."

57. The following general elements of the criminal offense of War Crimes against Civilians follow from the quoted legal definition and require the following to be established:

- a) the act must be committed in violation of international law,
- b) the violation must be committed in time of war, armed conflict or occupation,
- c) the act must be related to war, armed conflict or occupation,

d) the perpetrator must order or commit the offense;

58. The essential elements of this criminal offense, the variety of acts of commission in particular, confirm that the legislator made sure that the values embedded in international law are protected in their entirety.

59. For this criminal offense to exist, it is necessary that the act of commission constitutes the violation of the rules of international law, committed in time of war, armed conflict or occupation, that the offense the perpetrator committed or ordered must be related to a war, armed conflict or occupation.

60. Among other things, the foregoing legal provision is also based on the Geneva Convention Relative to the Protection of Civilian Persons in Time of War of 12 August 1949, that is, on Common Article 3⁹, which stipulates that victims of the alleged violation of the rules of international law must not take active part in hostilities, including members of the armed forces who have laid down their arms and those placed hors de combat by sickness, wounds, detention, or any other cause. Furthermore, “the perpetrator of the criminal offense within the meaning of Common Article 3 knew or should have known the victim did not take an active part in the hostilities at the time when the crime was committed.”¹⁰

61. Article 3 of the Geneva Convention contains the rules which are considered to be customary law and constitute the minimum standard from which the warring parties should never deviate.

62. For the protection under Article 3 to be implemented, the following acts are and shall remain prohibited at any time and in any place whatsoever with respect to the above-mentioned persons:

- a) violence to life and person, in particular murder of all kinds, mutilation, cruel treatment and torture;
- b) taking of hostages;
- c) outrages upon personal dignity, in particular humiliating and degrading treatment;
- d) the passing of sentences and the carrying out of executions without previous judgment pronounced by a regularly constituted court, affording all the judicial guarantees which are recognized as indispensable by civilized peoples.

⁹ Common Article 3 of the 1949 Geneva Conventions.

¹⁰ *Boškoski and Tarčulovski*, Judgement of the ICTY Appeals Chamber, para. 66.

(i) The act must be committed in violation of rules of international law

63. Article 173(1) stipulates that the accused must act in violation of “rules of international law.” The rules of international law defined under Article 2(b) of the Protocol Additional to Geneva Convention of 12 August 1949 are as follows: rules of international law applicable in armed conflicts means the rules applicable in armed conflict set forth in international agreements to which the Parties to the conflict are Parties and the generally recognized principles and rules of international law which are applicable to armed conflict.¹¹

64. Pursuant to Article 173(1) of the CC of BiH, whoever orders or perpetrates these acts violates these rules. Evaluating the charges in the Indictment, the Panel finds that the violations of the rules of international humanitarian law are contained in Common Article 3,¹² and these provisions of international law are therefore applicable to this case to the extent to which they satisfy the requirements of Article 173(1) of the CC of BiH and the rules of international law applicable to non-international armed conflicts.

65. “*International humanitarian law applies from the initiation of such armed conflicts and extends beyond the cessation of hostilities*.”¹³

66. The Panel concludes that an armed conflict existed in the territory of BiH, that is, the Srebrenik Municipality, at the relevant time, which shall be elaborated in more detail in the text below. The Panel notes that rules of international law, that is, Common Article 3, were applicable in the territory of Bosnia and Herzegovina in 1992.¹⁴

67. The Accused have been charged with having treated civilians in an inhumane manner, which actions are prohibited under international humanitarian law and referred to in the relevant provision of Common Article 3 under “*cruel treatment*”.

68. Finally, with regard to the mental state, it is sufficient that a person acted contrary to these norms, wherein it is not necessary that such a person is aware of the existence of these norms, nor is it necessary that the person is capable of defining the legal qualifications of the criminal offense he committed, but it is only required that the person is aware that his actions and intentions are criminal.

69. However, a person must have a specific *mens rea* applicable to the criminal offense he has been charged with, in order to be found guilty, either as the perpetrator or the order issuer.

¹¹ Additional Protocol I.

¹² Common Article 3 of Geneva Conventions of 12 August 1949.

¹³ ICTY Appeals Chamber in *Tadić*, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction, para. 70.

¹⁴ Ratified by SFRY on 11 June 1989. See the Declaration on Separation of Bosnia and Herzegovina of 31 December 1992, stating that it has become a signatory to the Geneva Conventions and Protocols Additional as of the date of declaration of independence on 6 March 1992.

70. In order to establish that rules of international law were violated in the present case, it is necessary to find that the action targeted the protected category of persons.

71. The Panel notes that in cases of crimes punishable under Article 173 of the CC of BiH based on Common Article 3, it is necessary that the victims of the alleged violation of rules of international law did not take active part in the hostilities, which also includes members of armed forces who laid down their arms and those placed *hors de combat* by sickness, wounds, detention, or any other cause.

(ii) The violation must be committed in time of war, armed conflict or occupation

72. The Panel submits that: “*an armed conflict exists whenever there is a resort to armed force between States or protracted armed violence between governmental authorities and organized armed groups or between such groups within a State*”.¹⁵

73. Evidence presented during the main trial indicates that at the time of the perpetration of the offenses and thereafter, there existed an armed conflict in BiH, between the Army of the Serb Republic of Bosnia and Herzegovina (VRS BiH) and, initially, the Territorial Defense of Bosnia and Herzegovina (TD), and then the Army of the Republic of Bosnia and Herzegovina (ARBiH).

74. The witness testimony also confirmed that the conflicts between the Serbs and the Bosniaks in the Municipality of Srebrenik began in early June 1992, by when, according to the documentary evidence tendered into the case record, the imminent treat of war, and then the state of war in BiH, had already been proclaimed in BiH.

75. Witness Nijaz Bajraktarević¹⁶ who worked as the Assistant Chief of the Operations Staff within the Municipal Territorial Defense Staff of Srebrenik (TD Srebrenik) during the war, testified that, before June 1992, they negotiated with the Serb inhabitants of Tinja, Podpeć, Jasenica and Špijunica, all villages in the Municipality of Srebrenik, so as to agree upon staying within the TD Srebrenik. When the negotiations were about to end, in the month of June, the Serb army from Ozren attacked the ambulance of the Srebrenik Health Centre, which is when three persons were killed and the Municipality of Srebrenik was split into two parts. The witness notes that after the event the conflict between the TD Srebrenik and the army of the SRBiH deepened.

76. Witness Ekrem Ibračević¹⁷ confirmed that, during the first half of May 1992, negotiations were held with the Serb population of that municipality. He testified about the conflicts in the

¹⁵ *Tadić*, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction, para. 70. See the Appeals Chamber Judgement in *Kordić and Čerkez*, IT-95-14/2-A, Judgement of 17 December 2004, para. 341.

¹⁶ Witness for the Prosecution, Nijaz Bajraktarević, examined on 16 November 2011.

¹⁷ Witness for the Prosecution, Ekrem Ibračević, examined on 16 November 2011.

wider region, in the territories of the municipalities of Tuzla, Brčko, Bijeljina, and the wider area of the Municipality of Srebrenik, and the village of Podpeć, which were triggered by the Serbs' attack on the ambulance. He states that Muslims and Croats as members of the TD participated in the conflict on one side, and Serbs as members of the Serb armed forces on the other.

77. Witness Stokan Marković¹⁸ testified that before the war he lived in the village of Jasenica, Municipality of Srebrenik, solely populated by Serbs. On 16 or 17 June 1992, Jasenica was attacked and he escaped to the village of Brezje. Then the village of Brezje was also shelled and, together with a group of 83 (eighty three) persons of Serb ethnicity, he ran away from the village. The witness then described that the armed members of the Mountain Brigade under the command of Kadro Buljubašić arrested him and other men. He testifies that, on that occasion, the Serb men were transported to Srebrenik, while their wives and children left for the village of Straže. Together with some ten men, he was transported to the Centre in Rapatnica, Municipality of Srebrenik.

78. Witness Jovo Đukić¹⁹ testified that the village of Brezje, which belongs to the Municipality of Lopare and was only populated by Serbs, was attacked by the Srebrenik Municipality TD on 19 June 1992. According to him, on that occasion he was captured as a civilian and taken to the village of Straže and then to Rapatnica.

79. Witness Pero Đukić²⁰ testified that he had lived in the village of Brezje before the war broke out. He states that, on 18 June 1992, the inhabitants of the village received an ultimatum from the TD Tuzla calling on them to surrender and, on 19 June, the village was blockaded and shelled, on which occasion three persons were killed and the houses in the village partially destroyed. On that occasion, one part of the inhabitants escaped towards the woods, and the other, including him and his brother Drago Đukić, towards the village of Jasenica. They stayed in Jasenica until late July/early August, when they were captured. On that occasion a TAM truck transporting soldiers and military and civil police arrived in the village. They put him and his brother Drago into the van and drove them to Rapatnica.

80. The testimony of witness Pero Đukić was corroborated by his brother Drago Đukić. According to him, the village of Brezje was attacked on 19 June 1992 initially by cannons and then by infantry from the direction of Drijen and Tuzla, on which occasion three persons were killed. Together with his brother, he fled to Jasenica where he stayed for about a month and then they were arrested by the armed members of TD and taken to Rapatnica.

81. Among other things, in the part concerning Srebrenik, the following is stated in the 20 June 1992²¹ report on the situation in the territory of the Municipality of Tuzla and certain

¹⁸ Witness for the Prosecution, Stokan Marković, examined on 14 December 2011.

¹⁹ Witness for the Prosecution, Jovo Đukić, examined on 28 December 2011.

²⁰ Witness for the Prosecution, Pero Đukić, examined on 18 January 2012.

²¹ Prosecution Exhibit No. T-12, /Report on the situation in the Tuzla municipality and certain municipalities in the region, for the period between 18:30 hours on 19 June and 18:30 hours on 20 June 1992, sent by the Tuzla Regional Information Center to the Sarajevo Regional Information Center.

municipalities in the region, with regard to the Municipalities of Tuzla, Lukavac, Srebrenik and Gradačac:

“According to the obtained information... the settlement of Podpeć has been freed from Chetniks and the fights are in progress in the Tinja direction..... in the part towards ... in the Lukavac direction. Initial data indicate that the TD units cleansed the territory of Chetniks in the best way possible. A large number of Chetniks, weapons and equipment have been captured.....”

82. By the Decision on the Declaration of the Imminent Threat of War of 9 April 1992, the state of the imminent threat of war was declared in Bosnia and Herzegovina.²²

83. By the Decision on the Declaration of the State of War of 20 June 1992, the state of war was declared on the territory of Bosnia and Herzegovina.²³

84. It clearly follows from the evidence referring to both the period of time preceding the time and actions as charged and the relevant period of time “*from late July 1992 to mid August 1992*”, that there existed the war, that is, an armed conflict between the Army of RBiH and members of VRS BiH in the territory of BiH, specifically in the Municipality of Srebrenik, and the Panel therefore finds this element to be proven beyond any reasonable doubt.

(iii) The act must be related to war, armed conflict or occupation

85. The third requirement of Article 173(1) of the CC of BiH is that the accused’s act is related to an armed conflict.

86. Actually, “the armed conflict need not have been causal to the commission of the crime, but the existence of an armed conflict must, at a minimum, have played a substantial part in the perpetrator’s ability to commit it, his decision to commit it, the manner in which it was committed or the purpose for which it was committed. it would be sufficient if the perpetrator acted in furtherance of or under the guise of the armed conflict.”²⁴

87. This requirement is satisfied if the alleged crime is committed in furtherance of or under the guise of the armed conflict.²⁵ In *Prosecutor versus Dragoljub Kunarac and others*, the ICTY Trial Chamber notes: “.....Humanitarian law continues to apply in the whole of the territory under the control of one of the parties, whether or not actual combat continues at the place where the events in question took place. It is therefore sufficient that the crimes were closely related to the hostilities occurring in other parts of the territories controlled by the parties to the

²² Prosecution Exhibit No. T-9, Official Gazette No. 1.

²³ Prosecution Exhibit No. T-8, Official Gazette No. 7.

²⁴ *Kunarac, Kovač and Vuković*, IT-96-23 I IT-96-23/1-A, ICTY Appeals Chamber Judgement of 12 June 2002, para. 58.

²⁵ *Kunarac and others*, Appeals Chamber Judgement, paras. 58 - 59.

conflict. The requirement that the act be closely related to the armed conflict is satisfied if, as in the present case, the crimes are committed in the aftermath of the fighting, and until the cessation of combat activities in a certain region, and are committed in furtherance or take advantage of the situation created by the fighting.”²⁶

The relevant factors for evaluation of the nexus between the act and armed conflict include the following:

- status of the perpetrator (exp. was he a combatant?);
- status of the victim (exp. the victim was not a combatant or a member of the opposing party?);
- is the purpose of the act to achieve a military goal;
- was the act committed in the context of the perpetrator’s official duties;
- was the offense committed with the assistance of other combatants.

88. Based on the presented evidence and having applied the criteria relevant to this case /status of the perpetrator and the status of the victim/, the Panel concludes that the criminal offenses as charged are closely connected with an armed conflict, which shall be thoroughly elaborated in the text below.

i. Military formations membership of the Accused Zurahid Mujčinović

89. The Accused Zurahid Mujčinović is charged with having committed the crimes of inhumane treatment in his capacity as a member of the 21st Mountain Brigade Srebrenik (21st MBr Srebrenik), that is, the MU (Military Unit) 5155 within the Army of the Republic of Bosnia and Herzegovina (ARBiH).

90. Having evaluated the evidence carefully, the Panel found that the Accused Zurahid Mujčinović, as a member of the so-called Hunting Company, which was subsequently renamed as the 21st Mountain Brigade Srebrenik within the MU 5155 of the Army of RBiH, had committed the criminal offense of inhumane treatment as the War Crime against Civilians in violation of Article 173(1)(c), and the operative part of the Verdict is therefore adjusted to the established facts relative to the Indictment.

91. The Panel concluded that the Accused had been a member of the so-called Hunting Company based on the following pieces of evidence:

92. Witness Džemal Buljubašić²⁷ testifies that the Hunting Company was formed before June 1992 when he joined it.

²⁶ *Kunarac, Kovač and Vuković*, case number: IT-96-23-T/IT, ICTY Trial Chamber Judgement of 22 February 2001, para. 568.

²⁷ Defense witness for the First-accused Džemal Buljubašić examined on 21 March 2012.

93. According to him, members of the Hunting Company were hunters, which is why it was named the Hunting Company. It included about 90 (ninety) persons, of whom 50- 60 (fifty-sixty) were at the frontline. In terms of its formation, the Hunting Company was a part of the TD. When he joined the company, he found there the Accused Mujčinović. The company existed until the fall of Smoluća in September, which is when the majority members, including Mujčinović, were demobilized. The following witnesses who were members of the Hunting Company confirmed that Mujčinović had been a member of the Hunting Company until its disbandment: Mensur Fazlić,²⁸ Nihad Fazlić,²⁹ Mevludin Abdulahović,³⁰ Hajrudin Abdulahović,³¹ Mujo Rešidović,³² Ševalija Smajlović,³³ including witnesses Safer Ahmetović,³⁴ Enis Softić,³⁵ Samir Begunić,³⁶ and Suad Imširović.³⁷

94. Combatants distinguish themselves by wearing uniforms, or, at the least, a distinctive sign, and by carrying their weapons openly.³⁸

95. Members of the Hunting Company, including the Accused, had weapons and uniforms and were engaged at the frontlines facing the Serb forces in the Smoluća direction.³⁹

96. The Hunting Company ceased to exist in late September after the fall of Smoluća,⁴⁰ that is, on 22 September 2012, as the witnesses Mujo Rešidović, Hajrudin Abdulahović, Mevludin Abdulahović specified, which is when it was transformed into the 21st Mountain Brigade in Srebrenik.

97. Considering the foregoing testimony of witnesses, the Panel accepts the defense's argument on the existence and the Accused Mujčinović's membership of the so-called Hunting Company, and that it operated within the TD Srebrenik.

98. Considering that, in the military-organizational and formation sense, the TD preceded the Army of RBiH into which it was transformed, it is clear why it is stated in the military documents of witnesses who were members of the Hunting Company that they belonged to the Armed Forces (AF), that is, the Army of RBiH until 22 September 1992⁴¹ after which date all of them, including the Accused Mujčinović, except for Nihad Ibrišimović,⁴² were demobilized.

²⁸ Defense witness for the First-accused, Mensur Fazlić, examined on 4 April 2012.

²⁹ Defense witness for the First-accused, Nihad Fazlić, examined on 4 April 2012.

³⁰ Defense witness for the First-accused, Mevludin Abdulahović, examined on 18 April 2012.

³¹ Defense witness for the First-accused, Hajrudin Abdulahović, examined on 18 April 2012.

³² Defense witness for the First-accused, Mujo Rešidović, examined on 18 April 2012.

³³ Defense witness for the First-accused, Ševalija Smajlović, examined on 4 April 2012.

³⁴ Defense witness for the First-accused, Safer Ahmetović, examined on 29 February 2012.

³⁵ Defense witness for the First-Accused Enis Softić, examined on 14 March 2012.

³⁶ Defense witness for the First-Accused, Samir Begunić, examined on 14 March 2012.

³⁷ Defense witness for the First-Accused, Suad Imširović, examined on 21 March 2012.

³⁸ *D. Milošević*, IVTY Trial Chamber Judgement, para. 946.

³⁹ Testimony of defense witnesses for the First-accused Džemal Buljubašić, Mensur Fazlić, Nihad Fazlić, Ševalija Smajlović, Mevludin Abdulahović.

⁴⁰ Testimony of witnesses Džemal Buljubašić and Nihad Fazlić.

⁴¹ Documentary evidence of the defense for the First-accused: O1/1; O1/2; O1/3; O1/4; O1/5; O1/9; O1/10.

⁴² Documentary evidence of the defense for the First-accused: O1/6.

99. It follows from the documentary evidence for the prosecution, that is, data obtained from the official records of the Federation Ministry for Issues of the Veterans and Disabled Veterans of the Defensive-Liberation War number: 07-03-565-1/10 of 20 July 2010,⁴³ that:

Zurahid Mujčinović was a member of the MU 5155 Srebrenik from 5 April 1992 to 22 September 1992.

100. It follows from the documentary evidence for the defense, that is, from the Certificate of the Federation Ministry for Issues of the Veterans and Disabled Veterans of the Defensive-Liberation War number: 07/35-03/6-1-69/11 of 31 January 2011,⁴⁴ that the Accused Zurahid Mujčinović was a member of the AF of RBiH from(under 1):

1. *the Army of RBiH, from 5 April 1992 to 22 September 1992;*

101. Also, it is stated in the defense's documentary evidence, that is, in the response of the Ministry of Defense number: 13-04-1-135-7/09 of 31 January 2012, that the following data were obtained upon reviewing the archive of the Archive Depot of the Army of RBiH:

"..... Mujčinović Zurahid, militarily engaged from 5 April 1992 to 22 or 12 (illegible) September 1992 in the Srebrenik AF company. In the same book, the referenced person was not entered on the list of members of the Military Police and Hunting Reconnoiter Platoon

"The referenced person was not recorded in the VoB-form of MU 5155, of the Archive Depot of the Army of RBiH."⁴⁵

102. The analysis of these three pieces of evidence clearly showed that, although they were issued by the competent institutions in the field of the defense and issues of the veterans and disabled veterans of the defensive-liberation war, they did not contain identical data. The Panel finds it to be understandable. Namely, these organs operated at various levels of the State authorities with different scopes of competence and operations, so the available data and information in the field they cover differ as well.

103. This is even more so as the present case concerns data referring to the period of time when the hostilities in the territory of BiH broke out and when the Army of RBiH, in an organizational-formational sense and the manner of naming of formations within it, was at the very beginning of its existence, which explains the messy data in this regard.

104. However, apart from this, what is of key importance for the establishment of the accused's status, is the fact that all three documents contain data that, from 5 April 1992 to 22

⁴³ Documentary evidence of the Prosecution: T/7.

⁴⁴ Documentary evidence of the defense for the First-accused, number: O1/1 – Certificate of the Federation Ministry for Issues of the Veterans and Disabled Veterans of the Defensive-Liberation War, number: 07/35-03/6-1-69/11 of 31 January 2011.

⁴⁵ Documentary evidence of the defense for the First –accused, number: O1/13.

September 1992, the Accused Mujčinović was militarily engaged in one of the parties to the armed conflict, which follows from the referenced documentary evidence and also from the witness testimony according to which he was a member of the Hunting Company deployed along the defense line facing the Serb forces towards Smoluća.

105. With regard to the foregoing, the Panel also accepts the prosecution arguments according to which Mujčinović was a member of the MU (military unit) 5155 within the Army of the Republic of Bosnia and Herzegovina (ARBiH), which follows from the prosecution evidence tendered into the case file under number T-7, considering that this is an official document obtained upon request of the Prosecutor in case, to which the defense did not have any objection and which was not challenged by the content of any other evidence.

106. The same evidence titled *Information from official records of the Federation for Issues of the Veterans and Disabled Veterans of the Defensive-Liberation War*, number: 07-03-565-1/10 of 20 July 2010, also states that Zurahid Mujčinović was a member of MU 5155 Srebrenik from 5 April 1992 to 22 September 1992,

107. Furthermore, it follows from the documentary evidence for the prosecution titled the *Survey of formation names and numbers of the units, Army Headquarters, Administration for organizational-mobilization affairs* of 10 April 1995, that the new name of the MU 5155 is the 212th Mountain Brigade, previously named the 21st Mountain Brigade, which additionally supports the prosecution's arguments and the Court's conclusion on the existence of the military unit number 5155.⁴⁶

108. Thus, the Panel accepts the content of these pieces of evidence and finds that the old name of the MU 5155 is the 21st Mountain Brigade into which the so-called Hunting Company was transformed – that is, it was named the 21st Mountain Brigade Srebrenik, as testified by the referenced witnesses.

109. The foregoing shows that, from late July 1992 to mid August 1992, Zurahid Mujčinović was a member of the so-called Hunting Company, subsequently renamed into the 21st Mountain Brigade Srebrenik within the MU 5155 of the Army of RBiH.

110. Therefore, at the relevant time, the Accused was engaged in one of the parties to the armed conflict in the territory of BiH.

(iv) The perpetrator must order or commit the offense

111. Finally, Article 173(1) stipulates that the perpetrator must directly or indirectly commit a criminal offense or order others to commit it.

⁴⁶ Documentary evidence of the Prosecution, No. T-10.

112. As the foregoing finding refers to the type of responsibility of the accused,⁴⁷ it does not constitute an element of the criminal offense as such and it will be elaborated in detail in the part of the Verdict referring to the individual criminal responsibility.

(v) Conclusions on the civilian status

113. Pursuant to Common Article 3(1) of the Geneva Conventions of 12 August 1949, civilians shall be

“persons who do not take active part in hostilities, including members of the armed forces who have laid down their arms and those placed hors de combat……. (...).”

114. Within the meaning of Common Article 3, a civilian shall therefore be a person who “*does not take active part in hostilities*” and who is not a member of the armed forces, that is, who is not a combatant.

115. It is believed that a person takes active part in hostilities if he engages in acts of war which, “by their nature or purpose, are likely to cause actual harm to the personnel or matériel of the enemy armed forces.”⁴⁸

116. In order to define the status of victims, the Panel accepts the definitions provided by Additional Protocol I to Geneva Convention of 12 August 1949 and relating to the Protection of Victims of International Armed Conflicts, according to which the *status of a combatant* shall be recognized to any person who belongs to an organized armed forces, groups and units which are under a command responsible to that Party for the conduct of its subordinates, and who is subject to an internal disciplinary system which shall enforce compliance with the rules of international law applicable in armed conflict.⁴⁹

117. If a combatant does not wear uniform, he must differ from civilians when taking part in an attack or a military operation being a preparation for an attack.

118. The clothing, activity, age, or sex of a person are among the factors which may be considered in deciding whether he or she is a civilian.⁵⁰

119. The Panel shall refer to the key evidence based on which it rendered a conclusion on the status of the aggrieved parties as civilians.

120. Witness Pero Đukić testified that, in late July or early August, he was arrested as a civilian in the village of Jasenica to which he, together with a part of Serb population from the village of

⁴⁷ The Prosecution states that the accused committed the referenced criminal offense in violation of Article 29 and 180(1) of the CC of BiH.

⁴⁸ *D. Milošević*, ICTY Trial Chamber Judgement, para. 947.

⁴⁹ Article 43 of the Protocol, Section II – Combatants and Prisoners of War.

⁵⁰ *Galić*, ICTY Trial Chamber Judgement, para. 50.

Brezja, had escaped due to the attack of the TD. At the time of the apprehension he and his brother were neither armed nor uniformed. He states that at that time military and civil and military police arrived in the village of Jasenica, and they were put into a van and transported to the prison in Rapatnica.

121. On the same occasion, his brother Drago who also found himself in Jasenica fleeing from Brezja, was deprived of liberty as well. This witness confirmed that he and his brother were civilians and that they did not have any arms or uniforms, while four members of the TD military police officers who arrested them had weapons and wore uniforms.

122. Considering that it follows from the testimony of both witnesses Đukić that they neither took active part in hostilities, nor were combatants, and as no evidence has been tendered to indicate the opposite, the Panel found that the Prosecution proved beyond a reasonable doubt that the aggrieved parties were victims of the offenses as charged, and that Pero Đukić and Drago Đukić had the status of civilians.

B. ELEMENTS OF THE CRIMINAL OFFENSE

123. The Prosecution charges the Accused Zurahid Mujčinović and Sulejman Hrustić with the commission of the criminal offense of War Crimes against Civilians in violation of Article 173(1)(c) (*inhuman treatment*) of the CC BiH.

a. Inhuman treatment under subparagraph c)

124. Although not expressly prohibiting “*inhuman treatment*”, both common Article 3 and Additional Protocol II render unlawful the “cruel treatment” against persons taking no active part in the hostilities.⁵¹

125. The ICTY has taken a clear position that the notions of “*inhuman treatment*” and “*cruel treatment*” are used interchangeably in terms of determining whether an offense constitutes a war crime.⁵² The Trial Panel in the *Hodžić* case held that the actions constituting “cruel treatment” under common Article 3. ... meet the requirements for the criminal offense to qualify as *inhuman treatment*...” under Article 173 of the CC BiH.⁵³

⁵¹ See, e.g., the Fourth Geneva Convention, Article 1(a); Additional Protocol II, Article 4(2)(a).

⁵² See, e.g., *Naletilić*, Trial Judgment, para. 246 (“... it is clear that the offences of inhuman treatment and cruel treatment are residual clauses under Article 2 [severe violations of the Geneva Conventions], and Article 3 [violations of laws or customs of war] of the Statute. Materially, the elements of these offences are the same”); *Prosecutor v. Kordić and Čerkez*, IT-95-14/2-T, Judgment, 26 February 2001, (*Kordić and Čerkez* Trial Judgment), para. 265 (“cruel treatment [is] equivalent to the offense of inhuman treatment in the framework of the grave breaches provisions of the Geneva Conventions”).

⁵³ *Hodžić*, First Instance Verdict of the Court of BiH, para. 33.

126. Analogically, any offense constituting inhuman treatment under Article 173 also constitutes “cruel treatment” under common Article 3 and Additional Protocol II and consequently a violation of international law.

127. Although the CC of BiH does not define the term of inhuman treatment, the jurisprudence of both the Court of BiH and the ICTY provides important guidelines to that effect. The Appellate Panel of the Court of BiH held that the term of “inhuman treatment”... includes all other offenses which are not specifically prescribed by the criminal offense which the Accused has been found guilty of...” so long as the Accused had the intention to cause the inhumane act.⁵⁴

128. The Appeals Chamber of the ICTY defined the elements of cruel treatment constituting a violation of laws or customs of war, in conjunction with common Article 3(1)(a) of the Geneva Conventions, as:

1. *an intentional act or omission... which causes serious physical or mental suffering or injury or or constitutes a serious attack on human dignity;*
2. *committed against a person taking no active part in the hostilities;*⁵⁵

129. For the Court to determine whether certain acts reach the level of severity and gravity, which is the requisite for criminal responsibility, the consideration must be given to a great number of circumstances, including: the level and intensity of such treatment and its duration; the actual physical injuries or intensity of physical and mental suffering; the nature and context of the treatment; the victim’s sex, age and health; and premeditation.⁵⁶

130. The ICTY jurisprudence offers a number of examples (*actus reus*) of cruel treatment such as: *mutilation or inflicting severe bodily injuries*⁵⁷; *beatings and other acts of violence*⁵⁸; *inflicting serious or severe injuries; severe damaging of physical or mental integrity*⁵⁹; *serious attack on human dignity*⁶⁰; *the act which constituted a serious attack on human dignity*⁶¹; *deportation and forcible transfer of groups of civilians*⁶²; *forced prostitution*.⁶³

131. The Trial Chamber in the *Blaškić* case took the position that “severe damaging of physical or mental integrity indisputably constitutes ‘inhumane acts’” within the meaning of Article 5 of the Statute.

⁵⁴ *Andrun*, Second Instance Verdict of the Court of BiH, p. 38.

⁵⁵ *Delalić*, ICTY Appeal Judgment, para. 424.

⁵⁶ *Andrun*, Second Instance Verdict of the Court of BiH, p. 38.

⁵⁷ *Kvočka et al.*, ICTY Trial Judgment, No. IT-98-30/1, para. 208.

⁵⁸ *Ibid*, para. 208.

⁵⁹ *Kordić and Čerkez*, ICTY Trial Judgment, para. 117.

⁶⁰ *Vasiljević*, ICTY Trial Judgment, paras. 239-240.

⁶¹ *Naletilić and Martinović*, ICTY Trial Judgment, paras. 271, 289, 303.

⁶² *Kupreškić et al.*, ICTY Trial Judgment, para. 566.

⁶³ *Ibid*, para. 566.

132. That a physical assault is an act which may constitute inhuman treatment is visible in the ICTY case *Prosecutor v. Boškoski and Tarčulovski*, where the Appeals Chamber upheld the decision that the civilians in the basement were subjected to physical abuse by policemen.⁶⁴

133. In the *Vrdoljak* case, the Trial Panel of the Court of BiH determined that the Accused acted inhumanely by beating the prisoners on two occasions "...with hands, kicking them with military boots on and with batons...".⁶⁵

134. The required *mens rea* for inhumane acts under this Article is met where the offender, at the time of the act or omission, had the intention to inflict serious physical or mental suffering or to commit a serious attack on the human dignity of the victim, or where he knew that his act or omission was likely to cause serious physical or mental suffering or a serious attack upon human dignity and was reckless as to whether such suffering or attack would result from his act or omission.⁶⁶

135. Before engaging in the analysis of the facts and substantiating the conclusions and positions on inhuman treatment against Pero Đukić and Drago Đukić, the Panel will first reflect on their detention in the Youth Center in Rapatnica.

i. Pero Đukić and Drago Đukić were detained in the Youth Center in Rapatnica

136. During the relevant time, persons of Serb ethnicity were detained on the premises of the Youth Center in Rapatnica.

137. This finding stems both from the Prosecution witness statements,⁶⁷ the Defense,⁶⁸ and documentary evidence entitled "List of the camps for Serbs", the ICTY document no. 06327648 to 06327660, which on page 7, under number 201, lists Srebrenik, the Youth Center in the Rapatnica suburb area.⁶⁹

138. Witness Ekrem Ibračević stated that he became a security officer in April and a member of the Srebrenik Municipal Staff, where he stayed until December '92. Rapatnica is one of the predominantly Muslim populated local communes of the Srebrenik Municipality. Before the war the Youth Center building was used for entertainment activities. Upon outbreak of the hostilities until his arrival at Rapatnica, the building was used as the Municipal Staff HQ. In April '92 it was used as a detention center where, as he put it, "everybody was brought there," including Serbs.

⁶⁴ *Prosecutor v. Boškoski and Tarčulovski*, IT-04-82, Judgment dated 10 July 2008 (*Boškoski and Tarčulovski* Trial Judgment), para. 383.

⁶⁵ *Vrdoljak*, First Instance Verdict, p. 2.

⁶⁶ *Krnjelac*, ICTY Trial Judgment, para. 132.

⁶⁷ Witnesses for the Prosecution: Nijaz Bajraktarević; Ekrem Ibračević; Stokan Marković, Jovo Đukić, Blažen Todić; Pero Đukić; Drago Đukić.

⁶⁸ Defense witnesses: Dževad Imširović; Safer Ahmetović; Ekrem Duranović; Enis Softić; Ismet Imširović; Samir Begunić; Ilija Lamešić; Suad Imširović; Džemal Buljubašić, Elvedin Ćudić.

⁶⁹ Documentary evidence of the Prosecution, no. T-11.

He recalls that in the period from mid May to mid June 43 (forty three) persons of Serb ethnicity were detained there, including Stokan Marković, Lazar Stanišić and Blažen Todić.

139. Serb citizens remained in Rapatnica until August '92, when they were transferred to the Tuzla central prison because of better conditions. Military Police (MP) secured the prison in Rapatnica. Mustafa Čović was commander while Ismet Imširović kept records.

140. Ismet Imširović confirmed the above mentioned, stating that he was mobilized to a squad of the MP company which secured the Rapatnica municipal detention facility. He discharged that duty from 7 July '92 to the end of '95. He was commander of the guard's squad whose task was to receive, search, accommodate and provide food for the detainees. The detention facility comprised the former entertainment room and three other ancillary rooms. Most of the detainees were members of the ARBiH – deserters, persons who violated curfew, and Serbs whose number reached about 100 in the period of July/August. The living conditions for all of them were inhumane. He knows that Lazar Stanišić, Pero Đukić and Drago Đukić were imprisoned there.

141. Witness Nijaz Barjaktarević, employed as the Chief of Staff for Operations at the Srebrenik TO (territorial defense) Municipal Staff, confirmed that witness Ekrem Ibračević was at the time Chief of Security and that the prison was inside the local commune building, that is, the Youth Center in Rapatnica, where persons of Serb ethnicity were initially detained but later on also the members of the ARBiH who refused to execute their tasks.

142. Witness Safer Ahmetović stated that in August '92 he became commander of the military police company platoon. At the time there was a detention center in Rapatnica, of which Ismet Imširović was warden, while Jusuf Imširović, Suad Imširović and Ekrem Duranović secured the prison. The persons brought to Rapatnica were members of the ABiH, civilians and prisoners of war of all ethnicities, including Serbs.

143. Witnesses Enis Softić, Ekrem Duranović and Elvedin Ćudić also confirmed that the said persons, as members of the MP Company Platoon, formed on 2 May 1992, guarded the Youth Center in Rapatnica at the relevant time.

144. Witnesses Stokan Marković,⁷⁰ Jovo Đukić,⁷¹ Blažen Todić,⁷² as well as the witnesses, injured parties, Pero Đukić and Drago Đukić,⁷³ testified that after they had been deprived of liberty they were taken to and imprisoned in the Youth Center in Rapatnica.

⁷⁰ Witness Stokan Marković: "He happened to be in the *Brezje* village when the shelling began. In a group of 83 (eighty three) people he fled into the woods. They heard an order to surrender and bursts of fire. That was a mountain brigade commanded by Kadro Buljubašić, from the Srebrenik municipal territorial defense, whose members tied him. The women went to the village of Straže; the men from the group were transferred to Srebrenik and he was taken to the center in Rapatnica.

⁷¹ Witness Jovo Đukić: "The village of *Brezje* was attacked on 19 June 1992, when he fled with the local population to the woods *Oprkovic* where the soldiers from Srebrenica-territorial defense showed up and captured him as a civilian. From there he was taken to the village of *Straže* and subsequently to Rapatnica."

145. Nobody informed them of the reasons for the arrest. The living conditions in the detention rooms were inhumane. That was a small, basement area, with no windows, light and water, dusty with coal. There was no carpet so they lied on the doors.⁷⁴ They could not move around freely, they were taken out to the toilette and were guarded by guards.

146. Witness Stokan Marković, who had been in Rapatnica before the Đukićs arrived there, also confirmed that he was not informed of the reasons for the arrest and that the living conditions during his detention in the Youth Center were deplorable.

147. The fact that the persons arrested and then detained in Rapatnica were not informed of the reasons for their arrest, that the justification of their detention was not determined in court or administrative proceedings and that it was an arrest without any legal or factual reasons clearly points at the conclusion that no legal grounds existed for the arrest, while the actual reasons for detaining these persons, specifically the injured parties Pero Đukić and Drago Đukić, are to be found in their ethnicity and religion.

148. In this respect, the Panel concludes that the persons of Serb ethnicity, including the aggrieved parties, civilians Pero Đukić and Drago Đukić, had been first unlawfully deprived of liberty in the village of Jasenice and against their will brought to and placed in the Youth Center building in Rapatnica.

149. Lastly, the Panel concedes that persons of other ethnicities were also detained in Rapatnica because they did not comply with their military or other obligations and civilians who did not adhere by certain standards of conduct.⁷⁵ Since the imprisonment of these persons is not the subject of the indictment, the Panel will turn to this topic only in the evaluation of evidence on which it based its conclusion on the relevant acts from the underlying case.

ii. Could the Accused Mujčinović visit the Youth Center in Rapatnica?

150. Before giving the explanation of the findings relating to the counts of the enactment clause of the verdict, the Panel will present the evaluation of evidence pertaining to a possible access and presence of the Accused in the Youth Center in Rapatnica.

151. During the proceedings, the Defense for the first-Accused did not deny that the Đukićs were physically and mentally abused, but it attempted to prove that the Accused did not do it but maybe some other persons. To that effect, the Defense submitted that the Accused was at the relevant time a member of the Hunting company deployed on the frontline towards

⁷² Witness Blažen Todić: Captured on 10 July in Smoluća from where he was transferred to the school and later to Rapatnica where he stayed for 16 days whereupon he was taken to Tuzla.

⁷³ See paras. 121 and 122 of the verdict.

⁷⁴ Statements of witnesses Blažen Todić and Pero Đukić.

⁷⁵ Witness Ismet Imširović:.....*Persons who did not comply with the curfew were also in the prison; witness Safer Ahmetović: "The persons brought in were members of the ABiH for various reasons, civilians and prisoners of war.... They were detained because of public order violations."*

Smoluća, that apart from the detained persons of Serb ethnicity there was also a military and civilian detention in the Youth Center with special rules about the possibility of entry of persons, and that the prison was secured by the military police platoon to which the Accused, given that he was not in the military police, did not come, nor could he get in.

152. The Panel accepted the Defense's assertion that Zurahid Mujčinović was a member of the Hunting Company. This finding however does not mean that the Accused could not visit the Youth Center in Rapatnica and take part in the commission of the offenses at issue. The supporting argument is, *inter alia*, the evidence of the witnesses, members of the Hunting Company, who testified about the Accused Mujčinović's membership of the same company.⁷⁶

153. None of them claimed that while in the Hunting company they spent the whole time on the frontline towards Smoluća, but, on the contrary, witnesses Mevludin Abdulahović and Nihad Fazlić stated that they spent three days on the frontline and then they were free for three days. These witnesses stated that they knew roughly the prisoners in the Youth Center in Rapatnica but they had never been there, nor had Mujčinović, because he was with them on the frontline.

154. Having analyzed their evidence, the Panel could not determine whether they indeed knew Mujčinović's whereabouts when he was not with them on the frontline. Moreover, the fact that these witnesses live in Srebrenik where the Accused lives as well, that they knew each other well, and that they were, as the Panel observed while they were giving evidence at the main trial, well informed about the facts and circumstances surrounding the case, indicates that the witnesses were not honest when they testified about the possibility of the Accused Mujčinović's visits to Rapatnica.

155. In addition, the Defense tried to prove that the Accused Mujčinović could not enter the Youth Center in Rapatnica because he was not authorized to do so, and therefore the Panel analyzed the following presented evidence:

156. Ekrem Ibračević testified that he, as a member of the Municipal Staff and in the capacity of the security officer, was in the Youth Center in Rapatnica on an everyday control. He interrogated the detainees, most often alone or with someone from security. Elvedin Ćudić⁷⁷ confirmed that Ekrem Ibračević was "chief" of military security that interrogated the detainees. He stated that the military security had its staff who conducted interrogations and he knew that Ibračević interrogated Stokan Marković.

157. Interrogations were conducted by civilian and military security bodies. On behalf of the military security, Ekrem Ibračević was in charge of interrogation and he was focused on the security sector and Serb prisoners of war.⁷⁸

⁷⁶ See paras. 92, 93, 94,95 and 96 of the Verdict.

⁷⁷ Witness Elvedin Ćudić was deputy commander of the military police company which secured the Youth Center in Rapatnica.

⁷⁸ Statement of the Defense witness for the first-Accused, Safer Ahmetović, who was, according to his own statement, commander of the military police company platoon in August 1992.

158. According to Elvedin Ćudić, there were documents on house rules and rules of conduct in the prison, to which, according to his words, no authorized personnel were allowed. With respect to the possibility of entering the prison, witnesses Safer Ahmetović, Ekrem Duranović,⁷⁹ Ismet Imširović⁸⁰ and Suad Imširović⁸¹ gave basically identical answers as he did.

159. Ismet Imširović additionally clarified that Ekrem Ibračević and Mustafa Čović from the military security could enter the prison, as well as Ilija Lamešić from the civilian security, as stated by witness Enis Softić. Lamešić always came alone while Ibračević was accompanied by military policemen. The witness Ilija Lamešić confirmed that he, as an inspector, interrogated the persons about the facts of interest for the state security service.⁸²

160. These witnesses said that they either did not know if the Accused Zurahid Mujčinović visited the Youth Center in Rapatnica⁸³ or that they had never seen him in Rapatnica.⁸⁴

161. The Panel concedes that there were certain rules in the Youth Center governing both the entrance of authorized personnel and the standards of conduct in the prison, which had to be abided by all of them.

162. However, the fact that the rules were not complied with was confirmed not only by the Đukićs themselves when they testified about the tortures they personally experienced there, but also by Blažen Todić, Stokan Marković, and the persons who secured the Youth Center and who justified it by saying that they were not authorized to attend the interrogations conducted by the members of military and civilian security, and as a result they did not know what happened during such interrogations.

163. Furthermore, witnesses Enis Softić, Dževad Imširović and Ismet Imširović stated that they worked in 48 hour-shifts, working 48 hours and resting the next 48 hours, which means that when they were not there they could not see who, if anyone, came to the center. In this respect, the Panel finds relevant the information given by the witness Ismet Imširović that each entry and visit were recorded, but not the persons that came with representatives of civilian and military security.

164. As these witnesses did not know whether the Accused Mujčinović visited the center in Rapatnica or that they never saw him in Rapatnica, and considering that they worked in shifts and that it was not recorded who came with the representatives of civilian and military security, the Panel concludes that there was a realistic possibility that other persons could also enter the Youth Center in Rapatnica, including the Accused Zurahid Mujčinović, in particular because the

⁷⁹ Statement of witness Ekrem Duranović who, as a member of the MP platoon in July and August 1992, performed a guard's duty in the Youth Center in Rapatnica.

⁸⁰ Statement of witness Ismet Imširović who was, according to his own statement, commander of the guard service section in Rapatnica at the relevant time.

⁸¹ Statement of witness Suad Imširović who, as a member of the military police, performed a guard's duty in the Youth Center in Rapatnica in July and August.

⁸² Statement of the Defense witness for the first-Accused, Ilija Lamešić, at the main trial held on 14 March 2012.

⁸³ Witnesses Elvedin Ćudić and Enis Softić.

⁸⁴ Witnesses Ismet Imširović and Safer Ahmetović.

witness Ekrem Ibračević who was in charge of and responsible for the persons in the Youth Center could not confirm with certainty that the rules for entrance to the Youth Center in Rapatnica were respected, stating that he:

“Wanted to believe they observed the order and that no one could enter the prison when he was not there.”

165. Considering the reliability of the evidence of these witnesses, the Panel finds that in case they did not deliberately evade incriminating the Accused by stating that they had never seen Mujčinović in Rapatnica or that they did not know if he came there, it leaves room for the conclusion that there existed a realistic possibility that the Accused Mujčinović indeed came to Rapatnica, which was confirmed by the injured parties Pero Đukić and Drago Đukić.

166. Moreover, the Panel holds that these testimonies were certainly dictated by the role and functions these witnesses had in Rapatnica.

167. The fact is - and it shall be further elaborated below – that the persons of Serb ethnicity imprisoned in the Youth Center in Rapatnica were physically and mentally abused and ill-treated while they were under control and supervision of these witnesses, which indicates that they have the interest to diminish their own role in these events in order to evade their potential responsibility for these events.

168. On the other hand, witnesses Pero Đukić and Drago Đukić testified about the abuse they suffered, which has not been disputed by the Defense. However, all the witnesses who claim they did not see the Accused Mujčinović in the Youth Center in Rapatnica do not point at any other persons who potentially did it. Likewise, the Panel is satisfied that the responsible military structures were not at the time at such a level of organization to completely eliminate any arbitrariness of individuals.

VII. THE ACCUSED ZURAHID MUJČINOVIĆ COMMITTED ACTS OF INHUMANE TREATMENT AGAINST PERO ĐUKIĆ AND DRAGO ĐUKIĆ

i. Counts of the Indictment

169. Under Count I1 of the Indictment, the Accused Zurahid Mujčinović is charged that, on several occasions, with five unknown soldiers, he beat the detainee Pero Đukić by punching him and beating him with a rubber baton all over his body, insulting him and threatening to kill him, retracted a syringe needle under his fingernails, burned his hands, stomach and back with a soldering iron, from which he still has scars, connected a cable with two clamps to electricity and attached the clamps to his ears causing him to lose consciousness; on one occasion he

put salt on his wounds, removed the bandage, saying that the “Chetnik will heal even without bandages”, thus inflicting on him severe suffering.

170. Under Count 12 of the Indictment, the Accused Zurahid Mujčinović and Sulejman Hrustić are charged that, on several occasions, along with other persons, they cursed and insulted the detainee Drago Đukić, punching, kicking and beating him with a rubber baton all over his body, while Zurahid Mujčinović retracted syringe needles under his fingernails, burned his body with a soldering iron, put salt on his wounds and on one occasion forced him to swallow about half a kilo of salt, without giving him water, thus inflicting on him severe suffering.

ii. Sections of the enactment clause of the verdict

171. The Panel has structured the enactment clause of the verdict based on the factual account of the Indictment and adjusted it to the state of facts established based on the presented evidence, confining itself to the scope of subjective and objective identity of the Indictment.

172. In section I of the enactment clause it was established beyond reasonable doubt that the Accused Zurahid Mujčinović, on several occasions, along with several other unknown soldiers, beat the detainee Pero Đukić by punching and kicking him and beating him with a baton in the back, arms and legs, and insulted him on religious ground, retracted syringe needles under his fingernails, while the Accused Mujčinović burned his back with a soldering iron from which he still has scars, connected the cable with two clamps to electricity and attached them to his ears, which made him lose consciousness, and on one occasion the Accused put salt on his wounds and removed the bandages from the wounds, commenting that “the Chetnik will survive even without bandages,” thus inflicting on him severe suffering.

173. In section II of the enactment clause it was established beyond reasonable doubt that the Accused Zurahid Mujčinović, on an unidentified date, together with other unknown soldiers, cursed and insulted the detainee Drago Đukić and together with other soldiers punched and kicked him all over his body, retracted syringe needles under his fingernails, while the Accused Mujčinović burned his body with a soldering iron, put salt on his wounds and made him swallow a cup of salt without giving him water, thus inflicting on him severe suffering.

174. The evidence given by the witnesses, injured parties, Pero Đukić and Drago Đukić, show that the Accused Zurahid Mujčinović, contrary to the rules of international humanitarian law, that is, in contravention of Article 3 of the Geneva Convention, committed inhumane treatment under Article 173(c) of the criminal offence of War Crimes against Civilians.

175. Witnesses Đukić, in their testimony at the main trial, gave an account as to how they were brought to Rapatnica and described the harsh living conditions and beatings to which they had been subjected.

176. In his testimony about his abuse, Pero Đukić⁸⁵ described the beatings that occurred on several occasions.

177. In this regard, he stated that immediately after he was brought to Rapatnica, in late July, where he stayed for 16 -17 days, after which he was transferred to the Tuzla Central prison, during the first night persons in uniforms started with interrogations and beating. During some ten or more days he was interrogated and beaten from 10 p.m. to 1-2 a.m. A group of four to five persons in uniforms participated in the interrogation and beating.

178. Describing how it happened, the witness said that: “*There was no normal conversation, everything started with beatings in the back, arms and legs*”, insults on religious grounds, calling him Chetnik.

179. When asked what they beat him with, the witness responded: “*with batons, hands and legs.*”

180. After ten days of beatings and insults, he was once taken to the hall of the Cultural Centre and taken on the stage. He saw a table, chairs and several (four, five) men in uniforms with a toolkit bag. All but one wore masks.

181. Then the beating started. They took a soldering iron and burned his back. The other held his fingers and retracted a big needle under his fingernails. They showed him some tools for extracting eyes.⁸⁶ He recalls an electric cable with a switch and clamps which they attached to his ears. He does not recall if they turned it on or not but he knows that he was all wet when they took him out of the hall. He suffered burns from the soldering iron and still has the scars.

182. After the abuse, he was taken back to the Youth Center basement and this man who wore no disguise took him to a room and put salt on the sustained wounds/burns.

183. Nurses dressed his wounds but the man who put salt on his wounds removed the bandage on one occasion saying that “the Chetnik will survive even without the bandages.”

184. In identifying the persons who took part in the beatings, insulting and abuse, Pero Đukić spoke about two groups of persons. Both groups had uniforms.⁸⁷ The group that was present when the needles, an electrical cable with clamps and a soldering iron were used in the abuse, was masked except for one person who was referred to as “Zoka” or “Drummer”. This “Zoka” was present during each of his beatings, either by the group of uniformed persons who were not masked or during the abuse when he was burned with the soldering iron and when needles were retracted under his fingernails or when he was attached to electricity, when “Zoka” was in the group of masked persons and was the only one who did not wear a mask.

⁸⁵ Section I of the enactment clause of the verdict.

⁸⁶ Testimony of witness Pero Đukić dated 18 January 2012, pp. 16 and 17 of the transcript.

⁸⁷ Testimony of witness Pero Đukić dated 18 January 2012, pp. 25, 35 and 36 of the transcript.

185. The witness expressly stated that it was precisely the person called “Zoka the drummer” that was in the group that constantly beat him and also in the group with other persons when he once burned him with a soldering iron, put salt on his wounds and removed the bandages, and together with masked persons attached the clamps from an electrical cable to his ears which, when turned on, made the witness “all wet” without remembering what happened because he had obviously lost his consciousness. “Zoka the drummer” put salt on his wounds and undressed his wounds saying that “the Chetnik will survive even without the bandages.”

186. The witness described “Zoka the drummer” as being of delicate build and having speech problems. Before his transfer to Tuzla, the guard Suad told him that “*Zurahid should not have done what he did,*” which his brother Drago also confirmed.

187. In explaining how he came to know that “Zoka the drummer” was actually Zurahid, that is the Accused Mujčinović, witness Pero Đukić said that on one occasion when he talked in the Tuzla prison about what Zoka the drummer, Zurahid, did to him in Rapatnica, he came to know that his last name was Mujčinović and that he was called Zoka the drummer.

188. The witness clarified that Lazar Stanišić, who was at the same time with him and his brother in Rapatnica, told him that he knew Zoka the drummer, i.e. Zurahid, and that a certain Đorđe Todorović also told him that he knew Zoka the drummer and that his name was Zurahid.

189. At the main trial the witness identified Zurahid Mujčinović as “Zoka the drummer” who had abused him. The Panel will consider this identification as part of the overall testimony of this witness.

190. The witness Drago Đukić, while giving evidence about his abuse,⁸⁸ said that during his incarceration in the prison in Rapatnica from 19/20 July to mid August 1992 he was subjected to all sorts of interrogations that were conducted every evening.

191. During the day it was the so-called “*normal interrogation*” when a person would come from Srebrenik and conduct interrogations, while during the nights the interrogations were accompanied by kicking, punching and beating with batons all over their bodies.

192. This witness also stated that he was burned with a soldering iron and that needles were retracted under his fingernails and that he was forced to eat salt. While describing this event, the witness said that on one occasion he saw a suitcase full of tools and then:

“they switched on the soldering iron and burned”...inserted needles under the fingernails and then put salt⁸⁹, accompanied with curses and insults.

⁸⁸ Section II of the convicting part of the enactment clause of the verdict.

⁸⁹ Testimony of witness Drago Đukić, 18 January 2012, p. 57 of the transcript.

193. He was interrogated and beaten every night by persons in uniforms whose number varied from two to six. On one occasion, while he was beaten and abused and burned by a soldering iron, there were six (6) persons in uniforms, four of whom wore masks and two did not.

194. The witness said that before the abuse he heard the persons in uniforms say: "Mujčinović, you beat yours", and he said: "I have to beat you now, I played drums here." Together with other soldiers he cursed, insulted and beat him.

195. Mujčinović burned him with a soldering iron, put salt on his wounds and forced him to eat a full cup of salt, without giving him water, while he retracted needles under his fingernails together with a person whom the witness described as a "dark boy". He knew that the last name of the person who did it to him was Mujčinović because others called him so during the abuse.

196. The witness Drago Đukić said that he was certain that Zurahid Mujčinović took part in these actions and he learned his full name after being transferred to Tuzla together with his brother from the "people" from Podpeć and Tinja who had also been incarcerated in Rapatnica before them.

197. Drago Đukić stated on the record on identification of the person no. 10-02/7-31/08 dated 22 December 2008 with photo-documents that the person in the photograph under ordinal number 4 was Zurahid Mujčinović, the person who had tortured him in Rapatnica.⁹⁰

198. As for this documentary evidence, the witness described at the main trial where and how he performed identification and confirmed that he identified the Accused as stated in the record.

199. The Defense for the first-accused objected to the lawfulness of the performed identification.

200. The Panel finds that the procedure was carried out in accordance with Article 85(3) and (4) of the CPC BiH,⁹¹ and therefore it deems entirely unfounded the objections the Defense directed at the manner in which the identification was carried out and the fact that the acting Prosecutor was not present on that occasion but authorized official persons from the PSC Bijeljina who purportedly suggested to him which photograph to point at, given that the Defense allegations are without substantiation and the said documentary evidence is accepted as lawful, reliable and truthful.

201. In order to verify the allegations that the guard Suad told both injured parties that "Mujčinović should not have done what he did", which both injured parties asserted, and that

⁹⁰ Prosecution Exhibits T-5 and T-6; photo-documentation and Record of photo identification procedure dated 2 December 2008.

⁹¹ Article 85(3) of the CPC BiH reads: If necessary to ascertain whether the witness knows the person or object, first the witness shall be required to describe him/her/it or to indicate distinctive signs, and then a line-up of persons shall follow, or the object shall be shown to the witness, if possible among objects of the same type. Paragraph 4 of the same Article reads: If the procedure specified in Paragraph (3) of this Article is not possible, the witness may alternatively be asked to identify a photograph of the person among a set of photographs of persons unknown to the witness, or identify the object among a set of objects of the same kind.

Suad Imširović, who was a guard in Rapatnica at the relevant time, said during his evidence at the main trial that he was familiar with the names but he remembered neither Drago nor Pero, the Panel, accepting the motion of the Defense for the first-accused, pursuant to Article 85(2) of the CPC BiH, confronted the witnesses Suad Imširović and Drago Đukić, and on the other hand Suad Imširović and Pero Đukić as its own evidence.

202. However, the confrontation did not help clarifying the disputed situation because, as the Panel deems, as a result of the lapse of time, the injured parties Đukić could not confirm that Suad Imširović was the guard Suad who told them that “Mujčinović should not have done what he did,” while the witness Imširović himself stated that he remembered neither Drago nor Pero. Consequently, the Panel did not find this evidence to be of any probative value that would be either detrimental or favorable to either the Prosecution or the Defense.

203. That the Đukićs were indeed abused in Rapatnica also follows from the testimony of the Prosecution witnesses: Stokan Marković,⁹² Blažan Todić, as well as the witnesses of the Defense for the Accused Mujčinović: Enis Softić, Ismet Imširović and Ilija Lamešić.

204. The witness Blažen Todić stated that both he and Lazar Stanišić had been beaten during their detention in Rapatnica. He knows that the Đukićs were burned with a soldering iron while Lazar was “burned in the face”.

“Drago was beaten in the back”, he heard Drago’s and Pero’s screams.

205. The witness Enis Softić who worked as a security guard in the Youth Center in Rapatnica said that he heard from Imširović that some Serb detainees were injured, that they were burned with a soldering iron, but he did not know who they were. He heard the names of Pero Đukić and Drago Đukić.

206. Ismet Imširović himself said that Lazar Stanišić, Pero and Drago had visible injuries on their chests and backs. The witness concluded that a large group of inspectors participated in inflicting their injuries but he was not competent to identify the perpetrators. He just informed Elvedin Ćudić about it.

207. The witness Ekrem Ibračević also confirmed that Stokan Marković⁹³ and Lazar Stanišić⁹⁴ had been abused in Rapatnica.

208. Since the Đukićs, as well as other witnesses, pointed out that Lazar Stanišić was also together with them and was like them both physically and mentally abused in Rapatnica, the Panel, believing that he probably also had information about the abuse of the Đukićs and the

⁹² Statement of the witness Stokan Marković: *“Had been in Rapatnica before the Đukićs were brought in; he stated that shortly thereafter while waiting to see a doctor, Pero Đukić came and told him that a certain “Zoka the Drummer” burned him with an electrical soldering iron.*

⁹³ Statement of the witness Ekrem Ibračević: *“Stokan was beaten wantonly by a person called Huso.”*

⁹⁴ Statement of the witness Ekrem Ibračević: *“he knows that Lazar Stanišić sustained injuries and he believes that he had burns in the back”*

persons who did it, decided to examine this witness as a Court evidence. However, despite the attempts made, repeated summoning and both subjective and objective reasons he provided in the contacts (his residence in the Republic of Serbia, his serious health problems which prevented him from travelling, his indigent financial situation), the examination of this witness was not possible.

209. However, by correlating the testimony of Pero Đukić and Drago Đukić and other evidence produced at this trial, the Panel had no dilemma that the Accused Zurahid Mujčinović indeed participated in the acts described under sections I and II of the enactment clause of the verdict.

210. Although neither Pero nor Drago Đukić knew at the moment of their abuse the identity, i.e. the full name of the Accused Zurahid Mujčinović, taking into account the information about him which they obtained both during the abuse and later, the Panel is satisfied that Zurahid Mujčinović aka Zoka, Zoran, is the perpetrator of these offenses.

211. Both witnesses said that during the abuse the Accused was referred to as Zoka. Drago Đukić said that he heard him being called Mujčinović who said that he “played drums”, while Pero Đukić said that during the abuse others called him Zoka the drummer. That the Accused Zurahid Mujčinović, aka Zoka or Zoran, “played” drums, was a singer and entertainer, according to the Defense witnesses who personally knew him, was a common knowledge in Srebrenik.

212. With the initial information about “Zoka the drummer”, witnesses Đukić, while talking about their tortures from Rapatnica, also learned from other persons who knew him that Zoka the drummer was actually Zurahid Mujčinović, as they were from the same area as the Accused.

213. As the witnesses Đukić are from the village of Brezje from the Lopare Municipality, and were brought to and incarcerated in a different municipality, it is clear why they did not know him and why they tried to find out his full identity.

214. Without denying that the Đukićs were abused, the Defense tried throughout the proceedings to suggest that these acts were committed by some other persons, such as the military policeman Huso Hodžić aka Bobi, or a certain Muče, submitting that none of the persons in charge of the prison, starting from Ekrem Ibračević and persons from the military police to guard service, knew that the Accused Mujčinović ever visited there or they had never seen him, thus eliminating the possibility that the Accused is the perpetrator of these acts.

215. Admittedly, the witness Ekrem Ibračević himself said that Stokan was beaten wantonly by a Huso and that Lazar Stanišić had injuries in the back which were also inflicted by Huso. According to him, Stokan Marković and Lazar Stanišić did not complain to him personally but he found out that Huso did it. The witnesses Samir Begunić, Dževad Imširović and Suad Imširović also stated that Huso Hodžić aka Bobi was a person prone to alcohol and other problems and that he participated in the ill-treatment of the Serb prisoners. These witnesses also said that Huso Hodžić called himself Zoka or Zoran.

216. Based on the foregoing, the Panel accepts the possibility that Huso Hodžić participated in the abuse of Serb prisoners, especially if considered that groups of several persons in uniforms took part in the abuse and beating of the Đukićs on the relevant occasions and at other times, so it is possible that Huso or Muče was among them. This Defense theory corroborates the satisfaction of the Court that other persons who were not authorized or deployed there on any ground could without any control enter the building of the Youth Center in Rapatnica.

217. This is supported by the fact that Pero Đukić himself stated at one point that the so-called “Muče”, whose last name he did not manage to find out, also participated in his beating. However, with regard to the possibility of a mistaken identity, this witness does not in any way connect Muče with the Accused Zurahid Mujčinović, for whom he stated, as previously described, that he had meanwhile learned his true identity.

218. These Defense efforts to show that *someone else* other than the Accused Mujčinović committed the acts charged against him are directed at evading his own responsibility and are as such unacceptable for the Panel.

219. The Panel derives such a conclusion, primarily bearing in mind that neither Huso Hodžić aka Bobi nor a certain Muče are alive any longer. Therefore, the Panel considered these efforts as an attempt to shift the responsibility onto the deceased persons.⁹⁵

220. Moreover, the Panel cannot disregard the fact that the Accused Mujčinović contacted the witnesses Ekrem Ibračević, Stokan Marković and Pero Đukić, which suggests that the Accused certainly tried to influence the Prosecution witnesses.⁹⁶ Witness Pero Đukić also stated that the Defense for Ilija Lamešić who knew well that the Đukićs were abused because he visited Rapatnica as a civilian inspector, contacted him twice.

221. In this situation, a question arises as to why the Accused attempted to establish contact with the witnesses, but it also suggests the conclusion that the Accused was strongly motivated to influence their testimony in order to evade his own responsibility.

222. The Defense contested that the Accused Mujčinović had speech impediment at the relevant time. According to the Defense, the speech impediment which the Accused evidently now has, is a consequence of the stroke he suffered in 1999. This fact was raised because the injured party Pero Đukić said that the person that abused him spoke unclearly which, in addition to other facts and circumstances, also implied that the Accused was the person who committed the acts as charged.

223. In redirect examination by the Prosecutor, after being examined also by the Accused Mujčinović when he heard how the Accused now spoke, the witness said that the Accused has now even “more problems” with his speech than he had at the relevant time.

⁹⁵ Testimony of witnesses Ekrem Ibračević and Samir Begunić.

⁹⁶ Decision ordering prohibitive measures dated 14 December 2012 - revoked by the Decision dated 22 August 2012 following the completion of the evidentiary proceedings.

224. Furthermore, the witness Đukić is not the only witness who said that the Accused had speech impediment before the war, that is, before he suffered a stroke. Thus the witness of his defense, Nihad Ibrišimović, stated that the Accused:

“Spoke normally before the war, but had a speech impediment when he got nervous“

225. Having evaluated all produced evidence, whose analysis is presented above, with a particular reference to the evidence given by the victims Pero Đukić and Drago Đukić, whom the Panel considered credible and their evidence reliable and trustworthy, the Panel determined beyond reasonable doubt that the Accused Mujčinović committed the acts referred to in sections I and II of the convicting part of the verdict.

226. In the Panel’s opinion, the witnesses Đukić faithfully described, as already stated,⁹⁷ the physical and mental tortures they had suffered.

227. Observing their behaviour, what they said and the manner in which they, given their modest education, conveyed it during their evidence at the main trial, the Panel finds that they honestly spoke about what they had experienced without any intention to incriminate anyone else or to do so to any greater extent than they had indeed been mentally and physically abused.

228. The legal issues surrounding the existence of elements of “other inhumane acts” have already been discussed in paragraphs 124 through 135 of the verdict and they identically extend to the specific acts of perpetration as stated in sections I and II of the enactment clause of the verdict where the Panel determined that they satisfy the elements of this offense.

229. In this regard, the Panel finds that the specific acts which the Accused committed against the victims - beating, insulting, burning the body with a soldering iron, retracting needles under fingernails, putting salt on the wounds, removal of bandages, forcing Drago Đukić to swallow a cup of salt without giving him water, attaching an electrical cable to Pero Đukić’s ears – most likely inflicted on them agonizing physical and mental sufferings and pains, from which they still have scars and traumas.

230. The Accused committed these acts in violation of international humanitarian law and common Article 3 of the 1949 Geneva Conventions, which constitute acts of violence against life and physical integrity and satisfy the elements of the criminal offense of inhumane treatment under Article 173(1)(c) of the CPC BiH.

⁹⁷ Pages 35-37 of the verdict.

VIII. INDIVIDUAL CRIMINAL RESPONSIBILITY

231. The Indictment alleges that the Accused is responsible for the crimes charged against him under Article 29 of the CC BiH, in conjunction with Article 180(1) of the CC BiH.

232. Article 180(1) of the CC BiH provides that “A person who planned, instigated, ordered, perpetrated or otherwise aided and abetted in the planning, preparation or **execution of criminal offenses** referred to in Article 171 (Genocide), 172 (Crimes against Humanity), **173 (War Crimes against Civilians)**, 174 (War Crimes against the Wounded and Sick), 175 (War Crimes against Prisoners of War), 177 (Unlawful Killing or Wounding of the Enemy), 178 (Marauding the Killed and Wounded at the Battlefield) and 179 (Violating the Laws or Practices of Warfare) of this Code, shall be personally responsible for the criminal offense”.

233. The foregoing legal definition clearly shows that individual criminal responsibility exists for planning, instigating, ordering, **perpetrating** or otherwise aiding and abetting in planning, preparing or perpetrating a criminal offense.

234. Committing covers physically perpetrating a crime or engendering a culpable omission in violation of criminal law.⁹⁸

235. Article 29 of the CC BiH provides that “If several persons who, by participating in the perpetration of a criminal offense or by taking some other act by which a decisive contribution has been made to its perpetration, have jointly perpetrated a criminal offense, shall each be punished as prescribed for the criminal offense.”

236. The elements of co-perpetration under Article 29 of the CC BiH are:

- (1) A plurality of persons
- (2) Participation in the execution or
- (3) Making a *decisive* contribution which is substantial and without which the criminal offense would not have been perpetrated in the planned manner.
- (4) Conscious, voluntary and joint perpetration of the criminal offense as his own (joint intention).

237. The Accused is responsible because in a group with several unknown soldiers he participated in multiple beatings and insulting of Pero Đukić, retracting needles under his fingernails and attaching to him a cable with two clamps plugged into electricity.

238. The Accused is responsible because on an unidentified date, together with other unknown soldiers, he cursed, insulted and beat Drago Đukić all over his body and retracted syringe needles under his fingernails.

⁹⁸ *Krstić*, ICTY Trial Judgment dated 2 August 2001, para. 601.

239. With his actions, participating in a group of people, the Accused, as a co-perpetrator, made a substantial contribution to the execution of these acts,⁹⁹ which makes him directly responsible for these acts.

240. The Accused is responsible for burning Pero Đukić's back with a soldering iron, putting salt on his wounds, removing the bandage from the wounds saying that "*the Chetnik will survive even without bandages.*"

241. The Accused is responsible for burning Drago Đukić's body with a soldering iron, putting salt on his wounds and making him swallow a cup of salt without giving him water.

242. These acts constitute the acts of perpetration by commission, for which the Accused is directly responsible.¹⁰⁰

243. The Accused committed all these acts qualified as inhumane treatment under Article 173(1)(c) of the CC BiH with the direct intent to inflict severe physical and mental sufferings on the injured parties.

IX. SENTENCING

SENTENCING THAT IS NECESSARY AND COMMENSURATE WITH THE GRAVITY OF THE CRIMINAL OFFENSE

244. In terms of the criminal offence of inhuman treatment committed against the civilian population, the Panel considered a sanction which is necessary and consistent with the legal aims, including the relevant legal elements. The trial focused on the infliction of severe physical and mental sufferings on civilians.

1. The imposed sentence shall be necessary and commensurate with the level of the threat against persons and values protected (Article 2 of the CC BiH)

245. In this regard, the Panel shall also be mindful of the legal elements pertaining to this specific purpose, that is, the sufferings of the victims.¹⁰¹ Direct victims, Pero Đukić and Drago Đukić, testified in the case about the physical and mental suffering.

⁹⁹ Acts specified in paras. 237 and 238 of the verdict.

¹⁰⁰ Acts specified in paras. 240 and 241 of the verdict.

¹⁰¹ Article 48 of the CC BiH.

2. Criminal sanction shall be commensurate with the extent of suffering, and be sufficient to deter others from similar criminal offenses in the future (Article 6 and 39 of the CC BiH)

246. Special attention must be paid to the issue of deterrence from potential commission of these offenses in the future, as this is a grave crime and all available means must be deployed to preserve the rule of law and ensure that these offenses are never repeated again. In order to deter others from similar criminal offenses in the future, a sentence must be effective and sufficiently convey the enormity of the crime. The criminal offenses at issue shall be treated as severe violations, which they are, in a way that serves as a lesson to others.

3. Criminal sanction shall reflect the community's condemnation of the conduct of the Accused (Article 39 of the CC BiH)

247. International law, law of BiH and social community describe the conduct of the Accused as criminal under national and international regulations. Such crimes are to be condemned notwithstanding the affiliation of the perpetrator or the site of the commission. Therefore, they must not go unpunished.

248. In the contemporary world, notwithstanding the circumstances of the offences, such offenses cannot be justified. The sanction must therefore be adequate so as to prevent an inadequate punishment for the crime.

4. Criminal sanction shall be necessary and commensurate with the educational purposes of the Code, meaning that persons should be made aware of the danger of the crime as well as the justice inherent in punishing criminals (Article 39 of the CC BiH)

249. Trials and sanctioning of these crimes must demonstrate zero tolerance for the crimes committed at the time of war, but also show that criminal procedure is an appropriate way to unmask the crimes. The Court or its judgment cannot order or mandate reconciliation. However, a sanction that fully amounts to the gravity of the offense may contribute to reconciliation by offering a legal response and promote the commitment to serve justice instead of a drive for personal or community retaliation.

250. Taking into consideration all the elements relevant to the criminal offense committed by the Accused, the Panel holds that the imposed sentence of imprisonment for a term of 8 (eight) years constitutes a necessary and commensurate sentence that reflects the gravity of the crime.

a. THE SENTENCE OR CRIMINAL SANCTION MUST BE NECESSARY AND COMMENSURATE WITH THE INDIVIDUAL PERPETRATOR

251. Fairness as a legal requirement must also be taken into consideration in calculating a sanction,¹⁰² aside the specific circumstances of not only the criminal offense, but of its perpetrator as well. Two aims are relevant for the person convicted of the criminal offense: 1) to deter the perpetrator from perpetrating criminal offenses in the future¹⁰³ and 2) rehabilitation.¹⁰⁴ Rehabilitation is a purpose not only foreseen under the Criminal Code as one of the duties of the Court, but it is moreover the only purpose of sanctioning as recognized and exclusively demanded by international human rights law that the Court is to adhere to in accordance with the Constitution.

252. Article 10(2) of the International Covenant on Civil and Political Rights stipulates that: *“The penitentiary system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation”*.

253. There is a number of rules relevant to these purposes for they affect the sanctioning of the individually convicted person.¹⁰⁵ The rules, among others, include the degree of criminal liability, the conduct of the perpetrator before, during and after the commission of the criminal offense, motives and personality of the perpetrator. These considerations can be used in aggravation or mitigation of the sentences, as the facts dictate. The aim behind consideration of all these elements is to assist the Court in determining a sanction that is necessary and commensurate in terms of the purpose of sanctioning and elements that had already been taken into consideration in relation to the crime itself and its consequences upon the community, provided that the sanction corresponds to the preventive and reformative demands upon the specific perpetrator.

b. DEFENDANT

1. The degree of liability

254. The Accused Zurahid Mujčinović is directly responsible for the crimes he committed.

i. The conduct and personal situation of the Accused

255. The conduct and the personal situation of the Accused Zurahid Mujčinović before, during and after the commission of the crime contain both aggravating and mitigating facts, and are relevant in view of prevention and rehabilitation.

¹⁰² Article 39 of the CC BiH.

¹⁰³ Articles 6 and 39 of the CC BiH.

¹⁰⁴ Article 6 of the CC BiH.

¹⁰⁵ Article 48 of the CC BiH.

1. Prior to the commission of the criminal offense

256. Before the commission of the criminal offense, the Accused Zurahid Mujčinović was a family man. He had no prior convictions.

2. The circumstances of the criminal offense

257. The Accused used his membership of one of the warring factions and committed the crime.

258. The Court views the committed crime through the significance of values protected by law which in this case are the lives and health of people as inalienable rights and values degraded by this type of crime. A mere thought of needles being retracted under fingernails, sault put on open wounds, bodies burned with a soldering iron, connecting a living person to electricity, makes any reasonable person feel appalled and horrified while imagining the enormous fear and pain the victims of the torture must have suffered during that time, which violated their physical and mental integrity, the consequences of which they still feel to date.

259. The Panel considered as an aggravating factor the way in which the acts of inhuman treatment were perpetrated.

3. Conduct during the proceedings

260. In the course of the proceedings, the conduct of the Accused before the Panel was appropriate and met the Panel's expectations, and is therefore neither an aggravating nor mitigating factor.

261. However, on several occasions, the Accused contacted witnesses, including the injured party Pero Đukić. The Accused's intention was to influence the witnesses to change their testimony and thereby diminish his liability for his own actions.

262. The Panel considered as an aggravating factor the exertion of influence on the witnesses.

263. The existence of a motive does not constitute an essential element of the criminal offense in the relevant case, nor is it linked with the intent. The Accused had the necessary intent to commit the crimes prescribed under the Code and established in the reasoning to the verdict. Therefore, the Panel will not consider this issue, and motive is neither an aggravating nor mitigating factor.

ii. The personality of the Accused

264. The Court has no evidence on the personality of the Accused other than what he demonstrated by the commission of the criminal offense, and his evident conduct in the courtroom, which were both discussed in previous paragraphs.

iii. Reduction of punishment according to the Code

265. Article 49 of the CC BiH cites the following in terms of the reduction of punishment:

The Court may set the punishment below the limit prescribed by the law, or impose a milder type of punishment:

- a) *When law provides the possibility of reducing the punishment; and*
- b) *When the court determines the existence of highly extenuating circumstances, which indicate that the purpose of punishment can be attained by a lesser punishment*

266. The Panel took into consideration that at the time of the commission of the criminal offense the Accused was a family man with no prior convictions.

267. In deciding, the Panel considered whether to impose on the Accused a long-term imprisonment or a sentence exceeding the mandatory minimum of 10 years. This dilemma was resolved in favor of the Accused so the Panel chose the 10-year imprisonment. The Court then considered the scope of exceptionally mitigating circumstances, such as the Accused's deteriorated health in the present case. In 1999 the Accused suffered a stroke which caused his health to deteriorate, which the Court could observe themselves during the trial.

268. For this reason the Panel ruled in favor of the Accused and reduced the mandatory minimum sentence by additional two years, ultimately pronouncing the sentence of imprisonment for a term of 8 (eight) years.

269. The Panel concluded that the purpose of punishment can be achieved by a sentence shorter than ten years, as prescribed in Article 173(1) of the CC BiH.

iv. Deterrence and social rehabilitation

270. The length of a prison sentence as punishment for the crime is legitimate deterrence in most cases. This provides the offender with an opportunity to consider the effects of his actions on victims, to reflect on his past mistakes and to make amends for his actions.

c. CONCLUSION

271. The Court finds that this type of criminal sanction is commensurate with the gravity of the criminal offense, given the aggravating and mitigating factors and the exceptionally extenuating circumstances, the participation and the role of the Accused in the commission of the criminal offense, whereas the sanction will achieve the overall purpose of criminal sanctions and punishing in terms of Article 39 of the CC BiH.

X. DECISION ON COSTS AND CLAIMS UNDER PROPERTY LAW

272. Deciding on the costs of the criminal proceedings, the Panel considered all relevant circumstances on the part of the Accused and, having applied Article 188(2) and (4) of the CPC BiH, it relieved him of the duty to reimburse the costs of the criminal proceedings.

273. During the proceedings, the Accused requested to be placed into custody because he could not attend the main trial sessions due to his indigent financial standing.

274. Bearing in mind the Accused's indigent financial situation, the Panel decided that the costs be borne by the Court's budgetary appropriations.

275. As for the property law claims, pursuant to Article 198(2) of the CPC BiH, the Panel refers the injured parties Pero Đukić and Drago Đukić to pursue their claims under property law in a civil action, considering that the process of establishing the facts in terms of the amounts of the claim would require a longer time and would consequently protract the proceedings.

XI. ACQUITTING PART OF THE VERDICT

276. The amended indictment charges the Accused Sulejman Hrustić with the criminal offense of inhuman treatment under Article 173(1)(c) of the CC BiH, inasmuch as he:

On several occasions together with other persons cursed and insulted the detainee Drago Đukić and beat him with hands, kicked him and beat him with a rubber baton all over his body.¹⁰⁶

277. Based on the presented evidence, the Panel could not establish beyond reasonable doubt that the Accused Sulejman Hrustić committed these acts.

¹⁰⁶ For more detail, the allegations of the indictment dated 14 April 2011, amended on 10 July 2012.

278. Witness Drago Đukić stated that the Accused Hrustić is the person that participated in the said activities, describing how he found out it was him exactly. In addition, the witness stated for the record during the photo identification procedure, no. 10-02/7-32/08 dated 22 December 2008 with photo-documentation, that the person in photograph no. 2, marked as Sulejman Hrustić, was the person “Suljo aka Abur” who also tortured and beat him, just as Zurahid did, in the center in Rapatnica....”¹⁰⁷

279. In analyzing all other produced evidence, the Panel did not find that any other witness or documentary evidence pointed at Sulejman Hrustić as the perpetrator of the offense.

280. In this respect, the Panel recalls that witness Pero Đukić said that his brother Drago had mentioned a person who, apart from Mujčinović, abused him, but he did not know if it was Sulejman Hrustić, pointing out that he had never seen him in Rapatnica.

281. Likewise, witness Stokan Marković, who, according to Drago Đukić, said it was Sulejman Hrustić since he knew him as they both were from the same municipality, stated that it was true that he knew Hrustić and his family but he did not know whether Sulejman Hrustić came to Rapatnica or that someone mentioned Sulejman Hrustić while he was in Rapatnica.

282. According to the case law of international criminal courts, a judgment can be based on direct evidence, so the Trial Chamber has a discretionary right to decide whether the circumstances of a certain case require corroborating evidence.¹⁰⁸

283. According to the case-law of the Appellate Panel of the Court of BiH taken in the Vuković *et al.* case, one could not consider it unfair to base the decision on guilt solely on the statement of one witness, but only if that statement is sufficiently convincing and logical, consistent with other evidence, and if the decision based thereon is the only possible conclusion in the case.

284. Exercising the discretionary right and considering all the presented evidence and the circumstances surrounding the case, the Panel held in this case that it would not be fair to base a convicting verdict against the Accused Sulejman Hrustić solely on the statement of Drago Đukić and one piece of documentary evidence, which also stems from Drago Đurić.¹⁰⁹ In this respect, the Panel, in absence of corroborating evidence, could not be satisfied beyond reasonable doubt that the Accused participated in the actions as charged, since the *in peius* (detrimental) facts for the Accused could not be determined with certainty.

285. Bearing in mind the foregoing, the Panel, having applied the *in dubio pro reo* principle according to which the Court can consider a fact established based on the evaluation of

¹⁰⁷ Prosecution exhibits T-3 and T4.

¹⁰⁸ Appeal judgment in the *Kajelijeli* case, para. 170, citing the Appeal judgment in the *Niyitegeka* case, para. 92 (“The Appeals Chamber has consistently held that the Trial Chamber is in the best position to evaluate the probative value of the evidence material so it can, subject to its evaluation, rely solely on the statement of one witness to prove certain material fact”). The Appeal Judgment in the *Gacumbitsi* case, para. 72 citing the Appeal Judgment in the *Semanza* case, para. 153.

¹⁰⁹ Exhibits of the Prosecution T-3 and T4.

evidence only when it is satisfied of its existence at the main trial and when there is no more doubt in that respect as a result of the lack of evidence, and, having applied Article 284(c) in conjunction with Article 3 of the CPC BiH, acquitted the Accused Sulejman Hrustić of the charges.

VIII DECISION ON COSTS AND CLAIMS UNDER PROPERTY LAW

286. Pursuant to Article 189(1), the Accused Sulejman Hrustić is hereby relieved of the duty to reimburse the costs of the criminal proceedings and the scheduled amount, which shall be borne by the budgetary appropriations.

287. Pursuant to Article 198(3), the injured party Drago Đukić is hereby referred to take civil action to pursue his claim under property law.

Legal Advisor – Assistant

Tanja Curović

**PRESIDENT OF THE PANEL
JUDGE**

Davorin Jukić

INSTRUCTION ON LEGAL REMEDY: This Verdict may be appealed with the Appellate Panel of Section I of the Court of Bosnia and Herzegovina within 15 (fifteen) days from the receipt of the written Verdict.

XII. DOCUMENTARY EVIDENCE

ATTACHMENT 1

Documentary evidence of the Prosecution

EXHIBIT NUMBER	NAME OF THE EXHIBIT
T-1	Record of examination of witness Nijaz Bajraktarević
T-2	Official note of the State Investigation and Protection Agency, No. 17-15/3-1-98/09 dated 26 October 2009;
T-3	Record of photo identification procedure, PSC Bijeljina, no. 10-02/1-2/08 dated 2 December 2008.
T-4	Photo-documentation on photo identification procedure, PSC Bijeljina, no. 10-02/7-32/08 dated 22 December 2008
T-5	Photo-documentation on photo identification procedure, PSC Bijeljina, no. 10-02/1-1/08 dated 2 December 2008
T-6	Photo-documentation on photo identification procedure, PSC Bijeljina, no. 10-02/7-31/08 dated 22 December 2008
T-7	Letter of the Federation Ministry for Issues of War Veterans and Disabled War Veterans of the Defense and Liberation War, Department of Military Obligation Records, no. 07-03-565-1/10 dated 20 July 2010
T-8	Decision declaring the state of war issued by the Presidency of the Republic of BiH and the Order to declare general public mobilization in the territory of the Republic of BiH, Official Gazette of RBiH No. 7 dated 20 June 1992
T-9	Decision declaring imminent danger of war issued by the RBiH Presidency, Official Gazette of RBiH. No. 1 dated 9 April 1992
T-10	Overview of formation names and military unit numbers, Army Staff, Administration for organization and mobilization, Str.pov.no. 4/45-7-2 dated 10 April 1995, ICTY document no. 0414-5574 to 0414-5587
T-11	List of camps for Serbs, Committee for collection of data on committed crimes against humanity and international law no. 162/95 dated 13 November 1995, ICTY document no. 06327648 to 06327660

T-12	Situation report in the territory of Tuzla Municipality and certain municipalities in the region by Information Regional Center, dated 20 June 1992, ICTY document no. 01803783
T-13	Extract from criminal record for Zurahid Mujčinović, Srebrenik Police Station, no. 08-02/8-1-04.7-1680/BK dated 19 October 2009
T-14	Extract from criminal record for Sulejman Hrustić, Tuzla Police Administration, <i>pov.no.</i> 08-02/4-1-04.3-15/09-OA dated 16 October 2009
T-15	Extract from the CIPS database in the name of Zurahid /Mustafa/ Mujčinović
T-16	Extract from the CIPS database in the name of Sulejman /Ragib/ Hrustić

Attachment 1a)

Documentary evidence of the Defense for the Accused Zurahid Mujčinović

EXHIBIT NUMBER	NAME OF THE EXHIBIT
O1/1	Certificate of the Ministry of Defense, no. 07/35-03/6-1-69/11, dated 31 January 2011;
O1/2	Military ID Card in the name of Mujo Rešidović, no. 002238;
O1/3	Certificate of the Ministry of Defense on salaries of the members of the armed forces of RBiH for Jusuf Abdulahović dated 27 June 1996;
O1/4	Certificate of the Ministry of Defense on salaries of the members of the armed forces of RBiH for Hajrudin Abdulahović dated 7 May 1996;
O1/5	Certificate of the Ministry of Defense on participation of Džemal Buljubašić in the defense of BiH as a member of the armed forces dated 31 March 2006;
O1/6	Contents of the military ID card of witness Nihad Ibrišimović, no. 001858, dated 8 December 1993;
O1/7	Certificate of the Ministry of Defense that Dževad Imširović participated in the defense of BiH as a member of the armed forces in the period, no. 17-17-17-02-03-264-7023/05, dated 13 September 2006;

O1/8	Military ID card of Suad Imširović, no. 000186, dated 9 December 1993 and Certificate of the Ministry of Defense on salaries of the members of the armed forces of RBiH for Suad Imširović dated 19 June 1996;
O1/9	Certificate of the Ministry of Defense on salaries of the members of the armed forces of RBiH for Nihad Fazlić, dated 27 April 1996;
O1/10	Certificate of the Ministry of Defense that Šehalija Smajlović participated in the defense of BiH as a member of the armed forces in the period from 18 May 1992 – 22 September 1992;
O1/11	List of persons deployed to duty in the Srebrenik Municipal Assembly by shifts from 1 May – 10 May 1992;
O1/12	Duty roster by shifts for Zurahid Mujčinović, from 23 April – 30 April;
O1/13	Letter of the Ministry dated 31 January 2012;
O1/14	Letter to Archive Depot of the Army of RBiH
O1/15	Book "I See Bosnia Again", Hazim Hodžić, 1995, pp. 37 and 127;
O1/16	List of Military Police Company of the Srebrenik Municipal Defense Staff (OPŠO), no. 03-4-356/93, dated 26 May 1993;
O1/17	List of the members of the armed forces of the Srebrenik Municipality;
O1/18	Original discharge papers for Zurahid Mujčinović, dated 14 May 1999.

Attachment 1b)

Documentary evidence of the Defense for the Accused Sulejman Hrustić

EXHIBIT NUMBER	NAME OF THE EXHIBIT
O2/1	Official record data no. 07-03-565-1/10 dated 20 July 2010;
O2/2	Certificate of the Federation Ministry for Issues of War Veterans and Disabled Veterans of the Homeland War for Sulejman Hrustić dated 9 March 2011;
O2/3	Copy of the military document for the owner of a motor and horse-drawn carriage in the name of Sulejman Hrustić, dated 9 June 1992.
O2/4	Letter of the Ministry of Defense dated 25 May 2012.
O2/5	Records of issued military ID cards.